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DEPARTMENT OF JUSTICE AUTHORIZATION FOR FISCAL YEAR 1989

(Civil, Criminal, and Civil Rights Divisions)

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE DEPARTMENT OF JUSTICE AUTHORIZATION ACT
FOR FISCAL YEAR 1989

MAY 20, 24, AND 26, 1988

Serial No. J-100-63

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DEPARTMENT OF JUSTICE CIVIL DIVISION AUTHORIZATION FOR FISCAL YEAR 1989

FRIDAY, MAY 20, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee convened, pursuant to notice, at 9:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin (acting chairman) presiding.

Also present: Senators Grassley, Thurmond, and Metzenbaum.

Staff present: Karen Kremer (Senator Heflin); Sam Gerdano (Senator Grassley); Kevin McMahon (Senator Thurmond); and Eddie Correia (Senator Metzenbaum).

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator Heflin. The committee will come to order.

Today the Committee on the Judiciary will conduct a hearing on the authorization request of the Civil Division of the Department of Justice for fiscal year 1989.

I would like to welcome John Bolton, Assistant Attorney General for the Civil Division, to this hearing. Most members of this committee and staff had the opportunity to work with Mr. Bolton in his capacity as Assistant Attorney General for the Office of Legislative and Intergovernmental Affairs.

The Civil Division is requesting an increase of $9.2 million for fiscal year 1989; $2.1 million would be applied toward what is termed "uncontrollables" and $7.2 million would be for "automated litigation support". The Division is not requesting any additional staff positions.

The Civil Division serves as the law firm for the Government, and your testimony indicates quite an impressive fiscal record—$610.8 million for the Government in court-imposed awards and negotiated settlements and more than $2.8 billion in real property and other assets.

Our purpose today is to examine the priorities of the Civil Division and to determine how the litigation and appellate records impact upon the administration of justice.

We look forward to your testimony, and I will have some questions after you complete your testimony.

STATEMENT OF JOHN R. BOLTON, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. **Bolton**. Thank you very much, Mr. Chairman.

I appreciate the opportunity to appear before the committee today and address the Civil Division's 1989 budget request. I am glad that the work of the Civil Division is finally receiving the attention that it so richly deserves.

As you pointed out in your statement, the Civil Division represents the interests of the United States in a wide range of civil cases and matters. Our work is largely defensive in nature, although we do initiate litigation in the national interest and to recover millions of dollars owed to the Government.

I have a prepared statement which I would ask be submitted for the record, and in the interest of time, I'll just try and summarize it briefly.

Senator **Heflin**. It will be admitted into the record in full.

Mr. **Bolton**. As other Department of Justice witnesses have testified in other contexts, our society right now is engaged in a litigation explosion, and this tendency has certainly marked the work of the Civil Division. We would expect by the end of fiscal 1989 that our attorneys will be litigating a total of about 22,000 cases.

I might say that the attorneys of the Civil Division personally handle only the most important cases, those that have national implications or other important policy reasons, and that many civil cases are also handled by the 93 U.S. Attorneys' Offices around the country.

The total number of claims that we are talking about translate into a staggering monetary risk for the United States. In 1987, our attorneys defended claims of $136 billion—32 percent higher than the amounts defended in 1986. And if this trend continues, by 1989 the Treasury will be exposed to claims as high as $225 billion.

Let me if I could just take a moment here. This chart reflects the changes in the staffing levels, the number of cases handled, and the number of dollars at risk in Civil Division litigation. And as you can see, from 1981 to 1989, we have had only relatively modest increases in staff in the Civil Division, while at the same time, the claims that the Division faces have risen from somewhat over 15,000 to something over 21,000.

But even more importantly from the standpoint of fiscal responsibility, the level of claims—and what we are talking about here are both the defensive claims, where we are representing the United States, and the affirmative claims where we are receiving judgment support have risen an astounding amount, from $26.9 million to what we project, a total of $242.1 billion. Obviously, any weakening in the Civil Division's efforts could result in a dramatic negative impact on our budget situation.

Just for purposes of explaining the work in the Civil Division, we have prepared this chart. The Division is broken into six branches—the Commercial Litigation Branch, which handles everything from bankruptcy to international litigation; the Torts Branch, which handles some of the largest and most complex cases we have—the asbestos cases, major aviation disasters, admiralty cases, toxic substances and a host of others—Consumer Litigation, which essentially represents the Food and Drug Administration and has a number of other responsibilities in the area of interstate commerce, such as odometer fraud; Immigration Litigation, which is a relatively new section, created only 5 years ago, to handle burgeoning immigration litigation that we face in our courts, and I'll discuss that in just a moment, the effect of the Immigration Reform and Control Act of 1986; the Federal Programs Branch which, although not representing the Government in some of the dollar level claims as commercial litigation and torts, handles some of the most sensitive Constitutional and national security litigation that we face; and then also, our Appellate Section, which has a staff of about 50 attorneys that handle work in the courts of appeals around the country and also works closely with the Solicitor General's Office in preparing the briefs for the United States in the Supreme Court.

If I could turn first to the Commercial Litigation Branch, this is a branch that does work in many respects the closest to private law firms around the country, involving billions and billions of dollars of claims in bankruptcy, representing for instance the Rural Electrification Administration, which faces something like $9 billion in defaulted loans last year.

This branch is also responsible for the prosecution of civil fraud cases against the Government, and that has been one of the priorities of this administration, both civil and criminal fraud prosecutions of Government contractors.

Our aggressive prosecution of fraud cases in 1987 enabled recovery of more than $72 million in 51 different civil suits and pre-suit settlements. As further evidence of the aggressiveness of our program, in the first 6 months of fiscal 1988 alone, our recoveries have exceeded $136 million in 42 different matters.

The statement goes on to discuss a number of the specific victories and settlements that Division has won.

I also mentioned the Torts Branch. Twenty years ago, only 514—I use the phrase "only" advisedly—but only $514 million were at issue in the cases that the Torts Branch handled. Today there is more than $139 billion at stake in the over 6,000 torts cases that we are litigating today. By 1989, we expect the torts caseload to increase to more than 6,600 cases, with associated claims reaching $193 billion.

The statement goes on to list a number of cases where we have recently been successful, one of the most significant being the *Johns Manville* case, the first major asbestos case to be tried in the Claims Court.

I would like to take a moment here to discuss something that could well have a major budgetary impact on the Civil Division, but which also has ramifications for the entire Civil Service, and that is the Supreme Court's recent decision in *Westfall* v. *Erwin*. Basically, the Supreme Court held in that case that Federal employees sued in their personal capacity have to be acting both within the scope of their Government employment and be involved in the exercise of governmental discretion to be immune from personal liability.

The Supreme Court in that case virtually invited Congress to consider legislation that would correct that and make the United States the exclusive defendant in such cases. Legislation which we have proposed to remedy the *Westfall* decision received bipartisan support in the House, has been marked up in Congressman Frank's Subcommittee. We are hopeful that it will be introduced in the Senate shortly also with bipartisan support and that we can move speedily to correct the problems that the *Westfall* decision has posed.

The *Westfall* decision has its most immediate impact on rank and file employees of the Government, and it is in their interest, I think, to ensure that we protect them against personal liability.

I would also stress that our fix to the *Westfall* decision in no way addresses the question of Bivens Constitutional actions; those remain a separate subject to be addressed separately.

Now, quite apart from the general impact on Federal employees across-the-board, the *Westfall* decision could result in an enormous increase in either the workload of the Civil Division or of our need to retain private counsel when there are conflicting defenses that Government employees would want to raise.

We have a relatively small program for the representation of Government employees by private counsel now in the range of approximately $650,000. If the *Westfall* decision is not corrected, we project a very, very substantial increase in that amount to pay private lawyers to represent Government employees when the Government itself is conflicted out.

Next let me take up the Federal Programs Branch. As I mentioned, although the work of this Branch does not necessarily involve massive financial risk to the Government, the issues that they undertake have nationwide significance constitutionally and in the national security field.

In addition, the Federal Programs Branch representing the Consumer Product Safety Commission recently won a substantial settlement in the all-terrain vehicle litigation, which would provide immediate safety benefits to consumers across the country without the delay and risk consumed by the litigation that would have ensued had we not obtained this settlement.

I can say this, having had no part whatever in obtaining it, I think it is a really outstanding settlement, and I believe District Judge Gerhard Gesell said all that needs to be said when he wrote in his opinion approving the consent decree: "No decree designed to protect consumers has ever gone this far in meeting such a massive national consumer problem."

I mention also the Consumer Litigation group, which is a relatively small group that handles interstate commerce and food and drug matters. This branch obtained the largest fine ever imposed under the Food, Drug and Cosmetic Act recently, a $2 million fine against the Beech-Nut Nutrition Corporation for selling adulterated products under the label of 100 percent pure apple juice.

In separate actions in addition to the massive fine against Beech-Nut, the former president and vice president of the company were found by a jury to be guilty respectively of 352 and 448 felony counts of violation of Food and Drug statutes.

Turning next to the Office of Immigration Litigation, we have found that the congressional passage of the Immigration Reform and Control Act of 1986 has generated a substantial number of suits, and we expect as the implementation of the Reform Act continues that additional litigation will arise.

The first wave of litigation was essentially composed of challenges to the INS' regulations implementing the immigration bill, and they are in various stages of litigation now. I can say to the committee that one major goal was to ensure that the cutoff date for the legalization program was kept at May 4th, the date that Congress picked, and not a date that a court might choose to extend it to. And the Office of Immigration Litigation has been successful on that front.

The second wave of litigation that we foresee would be more likely to be individual suits challenging adjudications by INS of legalization applications and then further down the road as we get on the citizenship track, still more litigation to come.

One other aspect that I'd like to mention, and I think this is particularly important in light of Congress' recent enactment of Title X of the Foreign Relations Authorization Act, which required the initiation of litigation to close the Palestine Liberation Office's mission in New York that Senator Grassley and others were so involved in. We are now involved in several cases and expect to be involved in others to prevent alien terrorists from entering and remaining in the United States and to deny alien terrorists the opportunity to gain political and economic support within this country for their violent objectives. We hope to have legislation prepared shortly to submit for Congress' consideration involving alien terrorists in this country, and we look forward to working with this committee to ensure speedy passage of that legislation.

I have mentioned the work of our appellate section. They really have the responsibility in the second stage when we find, even where the Government is victorious in the district court, that frequently we find these cases being appealed, and indeed, the rate of appeal by unsuccessful private litigants is now higher than before. Their work becomes even more important, and right now, they have approximately $19 billion worth of matters pending before them.

I go on in our statement to discuss what we modestly call some of our unprecedented achievements in the Civil Division.

As you pointed out in your opening statement, Mr. Chairman, our 1987 result is a record $610.8 million for the Government in court-imposed awards and negotiated settlements, and our acquiring for the Government more than $2.8 billion in real property and assets.

I pointed out in that first chart that I showed you the importance of defensive litigation as well. In 1987, savings realized in defeated monetary claims exceeded $21.7 billion. And I am sure you can all appreciate that had we not been successful in that defensive litigation, it would have been a very substantial drain on the judgment fund and adverse consequences for the Federal deficit.

Central to the success of our litigation is a staff of able, hardworking attorneys. The most telling evidence of our staff's uncommon dedication is revealed in the amount of uncompensated overtime that they report. In 1987, our attorneys individually worked an average of 363 uncompensated overtime hours—the equivalent of having 88 additional attorney positions available to litigate our cases.

Also contributing in a major way to the Division's excellent performance has been our Automated Litigation Support Program. The experience with Johns Manville that I mentioned to you a moment ago is illustrative—if I could refer to another chart. I am sure that the committee is familiar with the huge amount of documents that are involved in any major case like this. To give you a sense of the magnitude of what we are talking about, the total range of documents represented by the cylinder here is some two billion pages that our attorneys had to deal with. Using automated litigation support, we screened 206 million pages. We microfilmed 5.5 million pages. We coded in computers 3.6 million pages, and we used in trial exhibits 33,000 pages.

Now, without the Automated Litigation Support Program, I think it is safe to say we would have been overwhelmed by private counsel because of the resources that they had available and the resources that the Civil Division would not have had available.

I can say, Mr. Chairman, that my own personal experience as an attorney here in Washington who has litigated against the Civil Division in my private practice capacity years ago, that before Automated Litigation Support that the Civil Division and other components of the Department of Justice were very hard-pressed to keep up with private law firms. I think we are still hard-pressed, but I think this program has gone a long way toward remedying the balance. And that is why the only real programmatic increase that the Civil Division requests this year, as you mentioned, is the $7.2 million increase for additional automated litigation support.

The $2.191 million request for uncontrollables represents salary increases, rent increases, the whole range of things that would keep the Civil Division operating at what in budget jargon we call the current services level, essentially doing what we are doing now. And as you noted, Mr. Chairman, we have not asked for any increase in personnel, but in order to maintain our level of activity, we feel it is essential, and OMB and the President have included in their budget the $7.2 million increase in the ALS Program.

This is, I think, an opportunity for Congress to spend a relatively small amount of money to help the Government defeat claims that could result in enormous judgments against the judgment fund, and in some cases could well spell the difference between success in litigation or failure in litigation. I have given some examples in the testimony, such as the Delta litigation involving the crash of a Delta jet at Dallas-Fort Worth some time ago. I would hope at a subsequent hearing when that trial is over to show the committee some of the exhibits that we used in that case as an example of what sophisticated litigation techniques the Civil Division is now able to use.

And let me just show you one last chart, which we refer to as our "ALS Lifeboat." The fact of the matter is that even with this request, we do not have the resources sufficient to provide support for all of those who need Automated Litigation Support. We have the asbestos cases, Johns Manville and the others I mentioned, some of the radiation cases; this is the famous WPPSS case, the Washington Public Power Supply System; aviation did make it somewhat into the lifeboat earlier this year, but you can see the whole range of our other pieces of litigation are threatened by the liability crisis over here, eagerly awaiting relief from the fiscal year 1989 budget.

So we commend that to your attention.

Mr. Chairman, I would be pleased now to answer any questions that the committee may have.

[The statement follows:]

Department of Justice

STATEMENT

OF

JOHN R. BOLTON
ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

CIVIL DIVISION AUTHORIZATION

ON

MAY 20, 1988

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to be here today to discuss the work of the Civil Division-and our 1989 budget needs.

The Civil Division represents the United States' interests in a wide range of civil cases and matters. Our litigation encompasses the full spectrum of legal problems encountered by business enterprises because the Government is engaged in innumerable ventures similar to those of a modern corporation -- buying, selling, construction, shipping, production of energy, insurance, housing and banking. Our work is largely defensive, responding to monetary claims and challenges to key Government programs. We also initiate suits to enforce programs vital to the national interest and to recover millions of dollars owed to the Government.

The Division's lawyers personally handle only the most significant of these cases -- those involving issues which are nationwide in scope, those in specialized courts such as the Claims Court and those with major policy implications or potential cost to the Treasury. U.S. Attorneys litigate the remaining cases, frequently with the benefit of extensive advice from our attorneys.

As you are aware, our society in recent years has turned more and more frequently to the courts to resolve many ordinary disputes. This tendency has caused the Civil Division's caseload to climb markedly. By the end of 1989, the volume of pending cases our attorneys will be litigating is expected to approach 22,000.

These claims translate into a staggering monetary risk to the United States. In 1987 our attorneys defended claims of $136 billion -- 32 percent higher than the amount defended in 1986. If this trend continues, by 1989 the Treasury will be exposed to claims as high as $225 billion. Thus, a primary aim of our litigation will continue to be to repel this growing assault of the public fisc.

Commercial Litigation Branch

Few areas of civil litigation more clearly affect Federal budgetary issues than commercial law and Government contracting. Over the last decade, the Government's purchases of private sector goods and services have grown phenomenally. The Civil Division plays a critical role in defending the Government's interest in a growing number of contractor disputes. A strong defense and timely resolution of these disputes is crucial for efficient awarding and performance of contracted services.

Our attorneys also initiate cases asserting the Government's creditor rights in loan defaults and bankruptcies. Last year, litigation concerning the Great Plains Coal Gasification Plant default on $1.5 billion in loans resulted in the Government's acquisition of the plant. We also represented the Maritime Administration, whose borrowers have filed bankruptcy petitions involving over $1.7 billion in defaulted loans. In the utilities field, we represented the Rural Electrification Administration in cases involving nearly $9 billion in defaulted loans made or guaranteed by the REA.

We continue to place great importance on the recovery of defrauded funds. Our perseverance is paying off. Aggressive prosecution of fraud cases in 1987 enabled recovery of more than $72 million in 51 different civil suits and pre-suit settlements. In the first six months of 1988 recoveries have exceeded $136 million in 42 different matters.

Defense procurement fraud cases are among the most important aspects of this program. We have achieved such recent successes as an $85 million settlement with Bell Helicopter for using inaccurate costs to overcharge the Army and others for helicopters, a $16.8 million settlement with Motorola for mischarging labor and materials on Navy electronics contracts, and a $7.25 million payment from Cubic Corporation for fraudulent manipulation of tests and reporting false test results to the Army on hand-held mine detectors.

We also secured a $1.6 million settlement with McDonnell Douglas for failure to disclose estimates of labor hours to the Air Force during contract negotiations, a $5.3 million recovery from C3, Inc. for evading competitive bidding requirements and submitting false billings to the Army for computer systems, a $1.8 million settlement with General Dynamics for disputed labor charging practices, and a $5.26 million recovery from Harris Corp. for submitting false claims to the Army for communications equipment. Harris also paid $1.26 million for overcharging NASA on a shuttle tracking system.

Of the many victories against fraud won recently on behalf of other Government agencies, the most noteworthy included a $20.1 million judgment against LTV for violation of the Federal Student Loan Program and a $10.5 million judgement against Paradyne Corp. for fraudulently altering a Social Security Administration contract. We also secured $3.7 million from Colonial Sugars, Inc., for improper submission of customs duties repayment claims to the Customs Service and $1.75 million from Sony Corp. for failing to disclose relevant pricing information.

Torts Branch

Foremost among our responsibilities is the defense of federal revenues targeted by a growing number of tort claims. The standard rule that the United States should not be liable for its regulatory or program activities is increasingly under attack. Traditional Government defenses are no longer ironclad. Cases which historically would have been the subject of relatively simple motions are now of major importance and threaten enormous fiscal impact.

Only $514 million were at issue in the cases we handled twenty years ago -- a mere fraction of the $139 billion at stake in the 6,064 tort cases we are litigating today. The torts explosion will continue to threaten the Treasury. By 1989, we expect the torts caseload to increase to more than 6,644 cases, with associated claims reaching $193 billion.

In the face of this relentless growth, our attorneys have been enormously effective in saving the Treasury billions of dollars each year. Among the most outstanding successes of the past year was the progress achieved in our asbestos defense. In Johns-Manville v. United States, the Claims Court trial judge dismissed the major claims made by Manville. While this ruling constitutes a major victory, it is only the beginning of a protracted battle. Johns-Manville has filed its appeal. Should the decision be reversed or remanded, the six other asbestos manufacturers will pursue their multi-billion dollar claims now pending in the Claims Court. Further, since this Manville decision sets precedents for World War II claims only, the manufacturers are expected to continue to argue post-World War II claims on other grounds.

While on the subject of tort claims, I would like to mention briefly a recent dramatic change in the law governing the personal tort liability of rank-and-file federal employees. By its January 13, 1988, decision in the case of Westfall v. Erwin, the Supreme Court held that federal employees sued in their personal capacities are not entitled to protection from liability for common law torts unless the actions giving rise to the suit were both within the scope of their employment and involved an exercise of governmental discretion.

As a result of Westfall, we are now faced with an immediate crisis of personal liability exposure for the entire federal workforce. Virtually all federal employees, and particularly rank-and-file civil service workers, face the possibility of being required to defend a lawsuit in which his or her personal fortune is at stake, even though the actions complained of clearly were official duties. This has created a new climate of uncertainty in which federal employees have no way of knowing whether they are protected when they act, or whether even the most routine of their official duties will expose them to a lawsuit jeopardizing their personal assets.

The prospects of personal liability lawsuits against the federal workforce not only has a devastating impact on individual civil service workers' morale but will severely inhibit the ability of many agencies to administer their programs and will wreak havoc upon agencies' ability to carry out their regulatory and law enforcement responsibilities.

Presumably because it recognized that its decision dramatically changed existing law and will result in substantial personal liability exposure for federal employees, the Supreme Court in Westfall expressly invited the Congress to consider the issue and fashion an appropriate legislative solution. H.R. 4358, the "Federal Liability Reform and Tort Compensation Act of 1988," introduced subsequent to the Westfall decision is an even handed response to the Court's invitation. Federal employees performing the myriad routine tasks which keep the machinery of Government operating deserve protection from personal liability for their official conduct. H.R. 4358 would provide that protection by amending the Federal Tort Claims Act (FTCA) to make a lawsuit against the United States under the FTCA the exclusive remedy for anyone injured by governmental negligence.

Mr. Chairman, we have been working with several members of your

Committee and their staffs on the possibility of introducing a companion bill to H.R. 4358 in the Senate. This legislation deserves expeditious consideration and strong bipartisan backing and we look forward to your support and that of other members of the Committee.

Quite apart from the merits of a proposed legislative solution to protect the federal workforce from personal liability lawsuits, the Westfall decision has the potential for significantly affecting the Civil Division's budget -- a dilemma which was unanticipated. Unless it is overturned legislatively, Westfall will inevitably lead to a greater number of conflicts between federal employee defendants in these lawsuits, making representation by Justice Department lawyers inappropriate and creating the need to retain private counsel. In the past, such conflicts rarely arose because the cases usually were resolved by a threshold motion; under Westfall, successful motions will be few and far between with protracted discovery and trials the rule rather than the exception. The Division's budget has for the past several years included $634,000 for private counsel fee payments. This funding was adequate for the few instances of conflict which did develop under prior law. Westfall, however, could increase the level of required payments to several million dollars annually; funds which are not at present available in the Division's budget or in the appropriation requested for 1989.

Federal Programs Branch

Another vital component of our defensive litigation involves challenges to acts of Congress and the Government's implementing regulations. Defense of these challenges entails the representation of nearly 100 federal departments and agencies, members of Congress and the federal judiciary.

While direct monetary claims are not a primary issue in most of these cases, this litigation involves massive financial implications. We are presently defending 19 suits challenging the constitutionality of the Farm Credit Amendments of 1985 and implementing regulations. This legislation provides a mechanism to protect the $60 billion system of banks and associations against a mammoth financial crisis.

Our attorneys also undertake affirmative litigation to shift the financial burdens to those who cause the Government to incur costs. For example, in the past year our attorneys recovered $3 million from Medtronic, Inc., a major manufacturer of pacemakers, to reimburse the Government for costs of treating Medicare patients with defective pacemaker leads. The Branch also recovered more than $1 million in flood insurance payments in negligence suits in Louisiana.

Recently, we obtained a settlement agreement in the ATV litigation which included a comprehensive safety package under which past and prospective purchasers have already been warned of the risks associated with ATV operations. Sales of three-wheeled vehicles by manufacturers, distributors and dealers have stopped and the companies have raised the age recommendations for the persons capable of operating different ATV models. The settlement and final consent decree recently approved by the court will avoid costly and protracted litigation and serves the public interest by providing immediate, comprehensive and guaranteed safety relief. In approving the decree, District Judge Gesell stated that "no decree designed to protect consumers has ever gone this far in meeting such a massive national consumer problem."

Consumer Litigation

To protect the health and safety of the Nation's consumers our attorneys initiate suits seeking civil and criminal sanctions against business entities and their officers engaging in criminal activities for economic gain. We bring suits to ensure that unsafe foods and drugs do not reach the marketplace.

Our cases also target hazardous and unsafe consumer products, unfair debt collection and consumer credit practices and unfair and deceptive advertising practices.

The importance of this work is most readily demonstrated by just a few examples. Last year we coordinated a nationwide crackdown on illegal steroid distribution -- involving U.S. Attorneys, the Food and Drug Administration, the Federal Bureau of Investigation and the United States Customs Service -- which resulted in the prosecution of 124 individuals and the seizure and interception of over $60 million worth of anabolic steroids and other such drugs which were illegally possessed by various dealers and users. We also obtained the largest fine ever imposed under the Food, Drug and Cosmetic Act, a $2 million fine against the Beech-Nut Nutrition Corp. The plaintiff pleaded guilty to 215 felony counts in connection with the sale for infants of artificially flavored sugar water depicted as "100 percent pure apple juice." In separate actions, the former president and vice-president of the company were found by a jury to be guilty, respectively, of 352 and 448 felony counts of violations of the food and drug statutes. Four other individuals involved in the conspiracy pleaded guilty to violations and two remaining defendants await trial in September.

Office of Immigration Litigation

Mr. Chairman, it is impossible to overstate the growing importance of immigration litigation. The enactment of the *Immigration Reform and Control Act of 1986* (IRCA) has triggered numerous suits, the defense of which is the responsibility of our immigration attorneys.

The first wave of immigration reform litigation has consisted of a series of class actions challenging the constitutionality of the law and the Immigration and Naturalization Service's implementing procedures. The challenges have targeted several IRCA provisions, focussing primarily upon eligibility for amnesty and agricultural worker benefits and INS enforcement.

For example, in Catholic Social Services v. Meese, plaintiffs challenged the procedures adopted by the Immigration and Naturalization Service (INS) to implement IRCA. They sought to limit the ability of the INS to regulate the entry and employment of any alien who may intend to apply for benefits under the new act. Our attorneys recently obtained a successful appeal.

In Romero-Romero v. Meese plaintiffs challenged INS's implementation of the Special Agricultural Worker (SAW) provisions, contending that INS fails to provide an adequate opportunity for aliens to apply for the special immigration benefits. The trial court is narrowing its preliminary injunction against INS and is considering the Government's motion to dismiss.

While we continue our defense of class action suits, a number of individual suits have been filed. We expect this second wave of IRCA litigation to extend into the foreseeable future, as aliens seek relief in cases contesting legalization denials and deportation orders. We also anticipate the emergence of litigation initiated by our attorneys against employers who demonstrate a pattern and practice of hiring illegal aliens.

Tasked with upholding the immigration reform, the work of our immigration attorneys has been and will continue to be critical. In addition, the recent enactment of Title X of the Foreign Relations Authorization Act holds promise for significant new litigation by our immigration attorneys in support of the Nation's efforts to fight terrorism. We are now involved in several cases and expect an increasing number to be brought under this and other statutes to prevent alien terrorists from entering and remaining in the United States, and to deny to alien terrorists the opportunity to gain political and economic support within this Country for their violent objectives.

Appellate Staff

The Civil Division's role in upholding Congress' laws and protecting the taxpayer's dollars from unwarranted claims does not end in the trial courts. Many judgments entered at the trial court level in Civil Division cases which are favorable to the Government, are appealed by our opponents. To ensure resolution of the problem which initially gave rise to the litigation, these cases must be defended at the appeals court level. Similarly, adverse trial court decisions must be studied and analyzed and appeals filed and prosecuted if the Government's interest is to be fully protected. Finally, several major Federal statutes provide direct review of administrative decisions at the appeals court level.

The Appellate Staff represents the Government in "last chance" efforts to defend a wide spectrum of major Government programs and policies. Mirroring the work of the Division's other branches, a substantial effort of the Appellate Staff is devoted to protecting the Treasury against enormous losses. Among the Staff's actions to protect the public fisc are numerous cases involving tort claims, debt collection actions and fraud suits. Because the most significant cases tend to be appealed, it should come as no surprise that the financial stakes in these cases are enormous -- exceeding $19 billion in 1987.

Unprecedented Achievements

The Division has been aggressive in its efforts to collect delinquent debts and curb fraud and corruption in Government programs. I am very pleased to report to the Committee that our pursuit of recoveries is yielding unparalleled results. In 1987 we secured a record $610.8 million for the Government in court imposed awards and negotiated settlements. No less outstanding was our success in acquiring for the Government more than $2.8 billion in real property and other assets.

Our success in a wide variety of suits, including procurement fraud, bankruptcy, bribery and kickbacks, pollution clean-up and customs fraud, enabled our lawyers to collect and deposit $112 million to the Treasury. In addition, the efforts of our attorneys secured $31.3 million in additional payments made directly to the client agencies at the time 1987 awards and settlements were finalized.

In contrast with the revenues we generated, our total operating budget during 1987 was less than $76 million.

To fully appreciate the Division's contribution to the Government's financial integrity, our performance in defensive litigation must be considered as well. During 1987, savings realized in defeated monetary claims exceeded $21.7 billion. These accomplishments also testify to the very substantial returns realized by taxpayers.

Key to Success

Central to the success of our litigation is a staff of able, hard-working attorneys. The most telling evidence of our staff's uncommon dedication is revealed in the amount of uncompensated overtime they report. In 1987 our attorneys individually worked an average of 363 uncompensated overtime hours -- the equivalent of having 88 additional attorney positions available to litigate our cases.

Also contributing in a major way to the Division's excellent performance has been our Automated Litigation Support (ALS) program. ALS provides an essential and economical approach to acquiring and handling massive volumes of documentary information. Conducting discovery and preparing for and conducting trials in cases with hugh document collections -- often numbering in the millions -- and large numbers of parties, witnesses, exhibits and depositions, simply cannot be done manually by Division attorneys and paralegals, no matter how many we may be able to assign to a given case. The Division's ALS program combines the application of micrographic and computer technologies with private sector personnel resources for handling the many large information collections involved in many of our cases. These services have played a pivotal role in many of our most important successes.

Our experience with Johns-Manville is illustrative: Using ALS the United States unearthed evidence that Manville knew of asbestos hazards more than fifty years ago. ALS also enabled us to master hundreds of thousands of pages of historical records, resulting in the Government's ability to undermine the opposition's expert testimony on a crucial element of the contractor recovery argument. Evidence available through ALS dismantled the opposition's argument that the United States and Manville conspired to suppress information on asbestos hazards.

There is no doubt about the critical role ALS occupies in cases which hinge on evidence buried in mountains of paper. When such cases involve multi-million dollar stakes, ALS is the only responsible means for avoiding enormous judgments.

Finally, our success has been aided by an office automation program designed expressly to enhance the efficiency of our legal staff. Our integrated office automation system (called AMICUS) provides our attorneys the tools they need to conduct legal research efficiently and effectively and create the numerous legal documents needed for court filings.

1989 Budget Request

In constructing the Division's 1989 budget request, our intent was to seek only those resources essential to meet the imposing requirements of a workload which continues to grow in volume, financial stakes and complexity.

Our request for $92,925,000 and 881 positions includes funding to cover $2,191,000 in uncontrollable inflationary cost increases and $7,200,000 to augment our Automated Litigation Support program.

The Division's ability to forego staffing increases for an additional year is absolutely predicated upon Congress' approval of the uncontrollable increases, enabling full utilization of our authorized staff. It is also totally reliant upon our ability to ensure that our attorneys are adequately prepared to confront our adversaries in court. For a growing number of our cases, ALS is the difference between being adequately prepared and being ill-equipped. More to the point, it is the difference between victory and defeat.

I have just shared with you how indispensable ALS proved to be in the Manville victory. It is also important that you appreciate what it means when that support is needed, but unavailable.

We must continue to support Asbestos litigation not only throughout the Manville appeal but by completing discovery and providing essential trial support in the remaining Claims Court cases. Otherwise we risk obliterating the recent initial, hard-won success.

The unavailability of ALS in late 1987 for the $150 million dollar Delta Dallas/Ft. Worth case as it neared trial forced us to seriously consider seeking a settlement unfavorable to the Government. In Daewoo, a customs fraud case seeking penalties in excess of $160 million, support during 1987 had to be retracted, seriously diminishing our ability to effectively prepare for this case against one of the world's largest corporations. This scenario is repeated over and over in numerous cases involving tort claims, frauds prosecution, claims court cases and more.

We must support our largest aviation cases where the defense of billions of Treasury dollars hinges on our ability to master huge numbers of depositions and documents.

We must support the defense of a growing number of Claims Court cases which have no feasible alternatives for handling millions of pages of documents and tracking events spanning decades.

Nor can we abandon our efforts to combat fraud where the ability to cross-reference mountains of information from criminal trials and investigations is essential to building viable prosecutions. ALS services are critical to our appellate litigation -- particularly in those instances when cases were lost at the trial level because they failed to receive such support during critical discovery and trial phases.

The program increase of $7,200,000 is crucial to meeting our most glaring litigation support needs, where failure to master huge volumes of evidence means certain losses totalling billions of dollars. Favorable action on this request is paramount to our ability to sustain the laudable success we achieved last year.

Mr. Chairman, I would be glad to answer any questions you or members of the Committee may have.

Senator HEFLIN. How much is the budget of the artist section of the Civil Division of the Department of Justice?

Mr. BOLTON. That, I think, was a contribution by one of our inspired management people in his spare time.

Senator HEFLIN. I see you have a lot of colorful, demonstrative evidence here. Do you have a full-time artist onboard down at the Department of Justice?

Mr. BOLTON. No, not in our division, anyway. But I mentioned that Dallas-Fort Worth litigation. We have taken in that, just as an example, the digitized flight boxes from the plane that crashed and produced what in effect is a movie of the last several minutes of that plane that will be an incredibly effective trial exhibit.

But faced with the deep pockets of many of the private litigants that we face, it really is a fairly modest response.

Senator HEFLIN. Now, you officially began with the Civil Division when?

Mr. BOLTON. In March of this year.

Senator HEFLIN. Have you made any major administrative changes since you came to the Civil Division?

Mr. BOLTON. Mr. Chairman, the only major change that I have made, if it can be described as that, is a reduction in the immediate staff of the Office of the Assistant Attorney General. Different people have different management styles. My predecessor had a relatively large staff of special assistants and special counsel, all of whom are quite fine lawyers and for whom I have a very high regard.

Because I have a somewhat different style, I have been reducing the size of the immediate office, hopefully to provide additional support in the litigating branches.

Senator HEFLIN. Has there been an increase in the number of cases referred to the U.S. attorneys from the Civil Division within the past year and the past 6 months of this year?

Mr. BOLTON. Well, I think there has been an increase overall in our case load, and over the past years of this administration, the Division has made an effort in cooperation with the U.S. attorneys to seek appropriate balance between the cases litigated by the U.S. attorneys and those litigated centrally by the Civil Division. And I think the answer is that there has been an increase in the number of cases handled by the U.S. attorneys simply because our capacity is relatively fixed at this point.

Senator HEFLIN. What are the procedures for deciding which cases the various branches will focus on? Are the initial decisions made by staff attorneys and those decisions reviewed by more senior officials, and how are disagreements resolved?

Mr. BOLTON. Basically, that's it. The various client agencies will refer cases to us or will know when we get sued in defensive litigation, which is the more common. The branches do overlap to a certain extent, but I have found in my time there that it has not been a significant problem to allocate the cases. There is plenty of work to go around, and we just handle it on an informal basis.

Senator HEFLIN. Legislation has passed the House of Representatives which would allow active military personnel to sue the Government for injuries suffered as a result of the negligence of military medical personnel. This legislation has been referred to the

Subcommittee on Courts and Administrative Practice. There is similar legislation introduced by Senator Sasser. The Appellate Branch is involved in many cases concerning the application of the Federal Tort Claims Act and the *Feres* doctrine. What is the position of the Department of Justice on legislation of this nature?

Mr. BOLTON. Mr. Chairman, as we have testified on several occasions in the past, we oppose the repeal of the *Feres* doctrine for several reasons. Number one, we think there is an administrative system within the Department of Defense to provide for compensation for service people and their families when they are injured, and we believe that that uniform, really worldwide system is more appropriate than individualized State tort law determinations.

We also agree with the Department of Defense and their assessment that bringing civil litigation against military superiors is a threat to systems of military discipline, and for that reason, as you quite correctly say, our Appellate Division is involved in a substantial amount of *Feres* doctrine litigation. We oppose repeal of that doctrine legislatively.

Senator HEFLIN. It is my understanding that the Appellate Branch of the Civil Division of the Justice Department filed an amicus brief arguing the independent counsel statute is unconstitutional. Does the Civil Division believe that Judge Walsh's parallel appointment will in effect prevent his case against individuals in the Iran/Contra affair from being dismissed if the statute is held unconstitutional by the Supreme Court; and is the Civil Division ready to argue this point?

Mr. BOLTON. That is a very important question, and I want to be careful in my answer here because of the pending litigation.

It was the intention of the Attorney General when he offered all of the existing independent counsels' parallel appointments to ensure that the work of the independent counsels not be derailed should the Supreme Court ultimately hold the independent counsel statute unconstitutional.

There have been questions raised by commentators as to the impact of work by any of the independent counsels before they receive the parallel appointment.

I think it is safe to say at this point we have come to no conclusion about the impact of the work before the parallel appointment, but we feel perfectly comfortable in arguing, as we have in several cases up until now, that the parallel appointment certainly insulates all of the subsequent work by any independent counsel from challenge by any of the targets of their investigations or any defendants should the Supreme Court hold the statute itself unconstitutional.

A substantial amount of work was done by the Civil Division before I came to it when Richard Willard was still in charge to put together the regulations that have since been issued that create the parallel appointments and the independent offices of counsel within the Justice Department. So it would have been not only on the litigation front that resources were expended, but also in compliance with the Attorney General's directive that we help implement the parallel appointment process.

Senator HEFLIN. One of the major objectives listed under the section of the Torts Litigation Branch is to promote the policy interests of the United States with respect to the development of tort law in the courts, legislatures, and other areas. This objective was not listed in the major objectives of the Tort Branch in last year's authorization request. Is this a priority that you have made since becoming head of the Division?

Mr. BOLTON. Well, I think my predecessor, Mr. Willard, made that one of his very highest priorities, and in fact, as you recall, we urged the introduction of three tort reform bills in prior Congresses. Unfortunately, none of our three bills have been adopted, although we still believe that the liability crisis that the Administration's Tort Reform Working Group identified is a real one, and we continue to hope that Congress would look favorably on tort reform at the national level.

There has been substantially greater success at the State level in recognition of the tort liability crisis, and I think some of the work that the Tort Reform Working Group did in providing model statutes for State legislatures and indeed city councils has borne a considerable amount of fruit.

Senator HEFLIN. You mentioned the *Westfall* case. What is the potential impact of this legislation on Federal employees?

Mr. BOLTON. I think it has had already a dramatic impact on their moral and on their confidence in conducting their jobs. The vast number of Federal employees up until now have been assuming that were they working within the scope of their employment that they would not be personally liable for any judgments that a tort plaintiff might win against them.

But in light of *Westfall* which, as I mentioned, the Supreme Court now requires the exercise of governmental discretion, it is very hard to say what that means and what it doesn't mean, but it has caused uncertainty.

I might point out also that there are a number of specific statutes on the books that protect certain specified classes of government employees from *Westfall*-type liability. For instance, governmental drivers cannot be personally liable for any tortious acts they may commit within the scope of their employment. Department of Defense lawyers may not be personally liable for acts that they commit within the scope of their employment. But many other Federal civil servants are. And the purpose of the legislation which we have proposed would be to make that uniform so that any Federal employee would not be personally liable.

Senator HEFLIN. What is the position of the Department of the scope of absolute immunity as it applies to Federal employees acting in the scope of their official duties?

Mr. BOLTON. Well, leaving out *Bivens*-type constitutional torts, because that is really a separate subject here, we think that for common law torts that Federal employees should be absolutely immune, assuming that they are within the scope of their employment.

Senator HEFLIN. Well, if an individual Federal employee is sued under the *Westfall* reasoning, is the Department of Justice responsible for obtaining counsel for these employees, and is the Department responsible for paying a private attorney?

Mr. BOLTON. There are really two options there, Mr. Chairman. In the first, the Government would in most instances provide Department of Justice lawyers to represent the Governmental employee. In certain situations where there is a conflict of interest among defendants who are Government employees, or where for some other reason it is not deemed to be in the interest of the Government to provide Department of Justice lawyers, we would pay private counsel under certain fee caps and with various arrangements.

It is really the risk of substantial additional payouts to private attorneys because of potential conflicts among governmental employee defendants that we are concerned about as a result of *Westfall*.

Senator HEFLIN. The Consumer Litigation Branch is responsible for protecting consumers from harmful product. Without violating in terms of any agreement, could you please comment on the Civil Division's action in the litigation surrounding all-terrain vehicles, or ATVs?

Mr. BOLTON. Yes. That was handled, actually, by the Federal Programs Division, but I think it is a major victory for consumers. It represents a very substantial settlement that was won after hard-fought negotiations.

There has been some criticism of the settlement, but I think its major benefit is that it brings relief to consumers immediately and does not put them at risk of protracted litigation which could last 4, 5, 6 or more years before any relief might be obtained, if any.

Senator HEFLIN. Mr. Bolton, as you obviously and as we all are aware, there has been a substantial amount of criticism appearing in the media and by commentators and various people concerning the Attorney General. Would you give us your opinion as to the morale of the Department of Justice under Mr. Meese at the present time?

Mr. BOLTON. Certainly. I can speak to the Civil Division. Most of the work of the Civil Division proceeds within the Division and really very little that we do goes outside for approval or for review. The major element of review above my level is for settlements or proposals to settle in excess of the limits of liability that I am authorized to sign. And I can say that there has been no adverse effect by any of the stories that you have read. The approvals are still coming at the same rate.

I think the lawyers in the Civil Division who, in almost every instance, are career civil servants continue to litigate their cases really unimpeded by anything else that may be going on, and that their morale is as much affected by when we win cases or lose cases as by anything else.

I think the morale in the Civil Division is good at this point.

Senator HEFLIN. Well, basically, you are saying that in regard to the operation of the Civil Division that you have career professionals who act as attorneys and also as other staff personnel, and the policy pertaining to the Attorney General other than overall direction that may be given as to priorities in certain fields, that their work is not affected, then, by the leadership in the Office of the Attorney General.

Mr. BOLTON. I believe that is largely correct. I think especially 7 years into an administration that the policies and priorities of the Civil Division are largely set; I think they are well-known and well-understood, and I have encountered no difficulty in implementing them since I have been at the Civil Division.

Senator **Heflin**. Mr. Bolton, recently, there have been press accounts concerning the maternity leave of one of your Senior Executive Service attorneys, Ms. Bernott. I think it is important to find out what the leave policy of the Department is for paternal leave, and is there a separate policy for junior staff attorneys and Senior Executive Service attorneys?

Mr. **Bolton**. Mr. Chairman, there is no separate policy as you have described. It is the policy of the Department to try and accommodate the needs of women seeking maternity leave with the overall work load of the Division. I would be more than happy to discuss this at whatever length you would want, but I can say certain things unequivocally right now.

Number one, there is no intent to discriminate against Ms. Bernott or anyone else. We have taken what is a complex personnel decision and attempted to do the right thing. There are times when you have to do that even assuming that there are going to be adverse political consequences from it. We have tried to make whatever decisions we have made without regard to the political consequences and we have tried to handle her case equitably.

Where we are now is that we have requested additional medical substantiation from Ms. Bernott, and we are still hopeful we are going to get it.

Senator **Heflin**. Well, what is the policy on parental leave? What is the policy of the Department relative to that?

Mr. **Bolton**. Well, if I could just take a moment to spell out some of the regulations on that, the general considerations are that maternity leave may be made up of a combination of annual leave, sick leave, and leave without pay. And the regulations specify under what circumstances those various kinds of leave can be granted.

The regulations further say that with respect to leave without pay—and I am quoting now from the regulations—"The authorization of leave without pay is a matter of administrative discretion. An employee cannot demand that he or she be granted leave without pay as a matter of right."

The regulations go on to provide guides under which leave without pay should be granted, and it says:

> In granting leave without pay, it must be recognized that certain costs and inconveniences to the Department are involved as follows: (a) encumbrance of a position; (b) loss of needed services from the employee; (c) obligation to provide employment at the end of the leave period, and (d) full credit for 6 months of each year of absence toward retirement.

These regulations have been applied to fairly substantial numbers of leave requests within the Division and within the Department. In this particular situation, I attempted to find out what comparable grants of maternity leave had been, and within the Civil Division comparable amounts of leave had been in the range of 12 to 16 weeks. The individual involved here had requested 28 weeks for medical reasons, and I felt that in light of that and other circumstances that we would ask for additional justification.

The individual in question at least for now has apparently decided that she doesn't want to provide the additional justification. As

I say, I am hopeful that she will change her mind, because it does represent a change in her previous position.

On April 21st, at her request, I met with her and with her attorney, and if I could just quote from the transcript that we took at that meeting, to protect both her and the interests of the Civil Division, Ms. Bernott's attorney said at that point—and now I am quoting from the transcript—this is her attorney, Mr. Wiggins, speaking.

"And as I think Joan told you or your secretary, or whoever it was that she spoke with over the telephone in arranging the logistics of this meeting, we had sought to arrange a time for a meeting at which we could have Dr. Chase"—who is Ms. Bernott's physician—"with us so that she could say directly to you what it is that she said to Joan, and your schedule and hers didn't permit that, apparently."

I said later that I would be more than happy to make myself available to meet the doctor's schedule at her convenience. Later in the meeting, I say—again, I am quoting from the transcript in every instance here—I said: "I think where we need to leave it is we'd like to hear some more from the doctor."

Mr. Wiggins, the attorney, said, "Sure."

Mr. Bolton: "Sure. And preferably sooner rather than later."

Mr. Wiggins: "Good."

And then finally, still later, Mr. Wiggins the attorney says—and I am quoting again—"And we'll get you a clearer statement of Dr. Chase's opinion. And you know, there has been some confusion. I think we can put it behind us, and that's good."

Mr. Bolton: "Okay. We'll wait to hear back from you, then."

Mr. Wiggins: "Excellent. I appreciate your time."

Those excerpts that I read from the transcript were of a meeting of April the 21st of this year. And all that we are asking for, the only issue in dispute here, is for the individual we have been discussing to assume again the position that her attorney took on April the 21st and provide us the additional medical substantiation.

I have said repeatedly, and I am happy to say it here again to the committee, we would in no way ask this individual to do anything that would jeopardize her health, nor is there any intention to discriminate against her or any other woman who seeks appropriate maternity leave. But we have to treat everybody equitably. We have to take into account the work of the Division. As I mentioned before, our attorneys work an incredible number of uncompensated overtime hours. And the absence of a very senior attorney puts a burden on all of our colleagues at the Division.

Senator HEFLIN. Is there any separate policy for junior staff attorneys, as opposed to Senior Executive Service attorneys, in this area?

Mr. BOLTON. There is no separate policy. It is a matter of practicality that it may be easier to replace, just as a hypothetical, someone on an assembly line than it is easier temporarily to replace somebody who is involved in extremely sophisticated and complex litigation. This is not a situation where we can simply put in somebody for 3 months or whatever period and then expect that that work could be picked up again later without any loss or any additional burden to other attorneys within the Division.

Senator **Heflin**. Has the Department investigated what may be used as guidelines in other departments of the Government or in private business as to having more specificity relative to the policy, rather than being almost a discretionary approach which your Division seems to use?

Mr. **Bolton**. I think that our Division's approach is consistent with what is used across-the-board at the Department of Justice. I think the experience to date has been that it is impossible and potentially unfair to have a flat rule as to what is appropriate maternity leave.

We have tried to be as careful as we can in making these individual decisions, because individual circumstances vary. And it is as much, I think, an improper thing to do to treat like circumstances unequally as it is to treat unlike circumstances equally.

Senator **Heflin**. Well, aren't there certain minimum necessities that have to be considered?

Mr. **Bolton**. And we are more than willing to consider them. At the present time, the individual we have been speaking about has used a total of 7 weeks of accumulated sick and annual leave, 5 weeks' advance sick leave, and I have granted an additional 6 weeks of leave without pay for a total of 18 weeks. She has asked for an additional 10 weeks based on medical reasons, although her original request for maternity leave was not based on medical reasons.

I haven't said yes or no to that request; I have simply asked for additional substantiation. And I think any employer in that situation has a responsibility to treat everyone in the Division fairly to do that.

As I mentioned before in quoting from the transcript of the April 21 meeting, I thought we had agreement that additional substantiation would be forthcoming. Apparently, that's not to be the case, although I will repeat again, I hope Ms. Bernott reconsiders.

Senator **Heflin**. Have there been any efforts to deprive this lady of any right of counsel?

Mr. **Bolton**. No, absolutely not. I have consulted with my career personnel on this matter, and have been advised and believe correctly that when we met with Ms. Bernott on April 21 that I could have said I was not going to meet with her attorney at all. I felt it prudent to allow the attorney to attend the meeting, and I would feel it prudent to allow him to attend subsequent meetings as well.

I wrote back directly to Ms. Bernott after the April 21 meeting and received a letter from her attorney that complained about it.

Now, if you are going to hold to the notion that my attorneys are to communicate with her attorneys, then that has to work both ways, as I am sure you would agree. And yet it turned out, after another change of correspondence, Ms. Bernott personally wrote to the Attorney General, asking that my handling of the matter be overturned.

Now, if she wants to communicate attorney to attorney, it seems to me she has a responsibility to do that as well.

I think, and am advised by my attorneys, that in a management matter such as this—we are not in litigation yet; this is purely a matter between someone under my supervision and me—that I can speak with her directly. And I don't think that results in interference with her right to consult counsel at all.

Senator HEFLIN. There may be further questions submitted on this and other issues that we have gone into today in writing to you, and maybe a request for files to be submitted to the committee, particularly some of the letters that Congressperson Patricia Schroeder has written you about and the correspondence on that. We'll keep the record open for that, for later determination as to whether they will be filed, and of course if they do, we would appreciate your expeditious handling of those matters.

Mr. BOLTON. I would be more than happy to do that, Mr. Chairman. We have tried scrupulously to follow the Department's policies here, and as far as I am concerned, our handling of this matter is an open book.

Senator HEFLIN. Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Bolton, in your testimony, you referred to my interest in the Anti-Terrorism Act of 1987, and so you know of my special interest in the litigation pending to shut down the PLO office in New York. I'd like to have for the benefit of the committee an update on that case.

Mr. BOLTON. I'd be happy to, Senator. There are actually two cases pending now. One is the United States case which we brought to implement title X and close to PLO mission, in which case the PLO is represented by Leonard Budine. A civil case was then filed on behalf of a number of Arab-American citizens and others interested in keeping the PLO mission open, those plaintiffs represented by Ramsey Clarke, and in effect those cases have been consolidated for briefing on motions to dismiss and motions for summary judgment before Judge Palmieri in New York.

The consolidated motions will be heard by Judge Palmieri on June the 7th, and although one can never predict how swiftly a court will act, we are relatively confident of an expeditious resolution.

As you may know, the United Nations went before the International Court of Justice, the World Court, seeking to compel the United States to submit to arbitration under the UN Headquarters Agreement. Because the United States agreed that the Headquarters Agreement was not applicable, we chose not to appear before the World Court. And there is an effort now in the United Nations to force this matter to arbitration under the Headquarters Agreement.

The plaintiffs, represented by Ramsey Clarke, sought a delay in the district court's consideration of the motions to dismiss pending that arbitration, and the judge denied that request. So the matter is being briefed, is nearly completed being briefed now, and will be argued on June 7.

I might say, Senator, as an example of the importance that the United States attaches to this case, that I have personally participated in it, the Attorney General is fully advised of our progress, and it is our expectation that Rudy Giuliani, the U.S. Attorney for the Southern District of New York personally will argue that case on June the 7th.

Senator **Grassley**. Well, my perception is that the State Department wouldn't care if this thing were just delayed and delayed and delayed forever. So I am very happy with what you said, and based upon what you said, then, I can assume that the Justice Department is going to go all out in the enforcement of the law that Congress has passed.

Mr. **Bolton**. Yes, sir. We intend to win this one.

Senator **Grassley**. Again, I think the Chairman made some reference to the malpractice cases that would increase the case load. Along that same line, I'd like to ask about the impact of pending cases to permit the judicial review of veterans benefit cases currently unreviewable in Federal courts. Would these cases be defended by the Civil Division if that law were enacted?

Mr. **Bolton**. Almost certainly, yes.

Senator **Grassley**. How could the Division handle the increased case load?

Mr. **Bolton**. Quite frankly, Senator, I don't think we could. I think every projection that we have been able to make indicates a very substantial increase in the case load that simply could not be met at existing staffing levels or existing budget levels. And I think we are all quite pleased, following the President's announcement of his support for a Cabinet-level veterans' department, that apparently Congress is close to coming to a conclusion that appeals from VA judgments will not be part of any bill that creates a Cabinet department, and we certainly support that.

Senator **Grassley**. But if that judicial review were passed, it would probably require a supplemental appropriation?

Mr. **Bolton**. I wouldn't want to predict, because we haven't come to that point, but I hate to think there would be a veto of something like that that the President has endorsed. If it went through, I don't see how we could proceed without a substantial supplemental appropriation, which is very difficult to obtain, as you know, in these tight budget times.

Senator **Grassley**. Is there any legislation now pending in the Congress that the Civil Division particularly supports?

Mr. **Bolton**. Senator, as I mentioned in my prepared testimony, the legislation that would fix the Supreme Court's decision in *Westfall* is one that we would find of importance not only for the Federal civil service Government-wide but also for the work of the Civil Division, as I mentioned.

Senator **Grassley**. In regard to the *Westfall* case, I want you to know that my staff has been working with your office and other members of the committee and the House Judiciary Committee on a solution to this problem. I hope to introduce a bill shortly to make it clear once again that persons injured by scope of employment acts must sue the Government under the Tort Claims Act, not the employee, under State common law rules, and I would look forward to a swift consideration in the Senate, and of course I look forward to working with you on that legislation as well.

Mr. **Bolton**. The same on our part, Senator.

Senator **Grassley**. Again, have the package of the new antifraud laws, including the False Claims Act, which I authored and passed a couple years ago, have they helped your attorneys?

Mr. Bolton. They have helped, and they have also put additional burdens on them, if I could explain briefly. The new civil investigative authority that your bill has given us has been very, very helpful in establishing cases that we would bring affirmatively for civil fraud.

In addition, as you know, your bill included an expansion of the qui tam provisions that has resulted since the passage of the bill in the bringing of approximately 60 qui tam actions, as contrasted to approximately 20 such actions in the 10 years before the enactment of your bill.

As you know, because it follows the procedures that you put in the bill, these qui tam actions are initially filed under seal to provide the Government with the opportunity to make an informed judgment whether to pick up the prosecution of those cases or to leave them with the qui tam plaintiff.

We provided to you earlier, I think, our resolution to some 32 of those. There have now been about 35 that we have made a decision on. We have decided to litigate in the name of the United States some 13 of those 35; we have declined in 22, and the remaining 25 are still under consideration.

So it has certainly increased the level of activity very dramatically.

Senator Grassley. Well, then, citizens are coming forward with information about frauds in Government programs, which then is very useful to you as a result of this legislation?

Mr. Bolton. It certainly can be, yes, sir.

Senator Grassley. Mr. Bolton, you devoted much of your prepared remarks to the Department's victories in the areas of fraud prosecution, particularly procurement fraud. You specifically mentioned the $85 million *Bell* Helicopter settlement. But in the *Bell* case and several other defense procurement fraud cases, I was shocked to learn that the same government that prosecutes the fraud case pays the cost of legal defense for the other side, so the taxpayer ends up paying twice. They fund your department's lawyers, and then they pick up the tab as a matter of allowable contract cost for the contractor and very high-priced lawyers.

Now, in the *Bell* case, I understand the Justice Department was able to negotiate out of having to pay about $3.5 million in legal bills. But we haven't been so fortunate in countless other cases where indictments have been dropped or there were acquittals.

Senator Roth, Senator Levin and I have discussed an amendment—in fact, we even discussed it with the managers when the defense bill was up a week ago on the floor of the Senate—an amendment to the Federal procurement law to limit contractors' recovery of legal fees. The House, on their DoD authorization bill, has already passed a bill sponsored by Congresswoman Boxer, and I am sponsoring the same bill in the Senate, to treat contractors' legal fee recovery the same that we would treat small businesspeople under the Equal Access to Justice Act.

Could I, if possible—in fact I really hope I can—get a commitment from the Justice Department to help us to work with the House and Senate Conferees on the DoD authorization bill on this issue?

Mr. **Bolton**. Very much so, Senator. We have an interest in that area as well. There are some disagreements between the proposals you have come up with, that Senator Levin and others have come up with, but frankly, I don't think they are of sufficient magnitude that we couldn't work together and come up with something that would be acceptable all around, because we share your interest in holding down defense costs, and I think this is an important step forward.

Senator **Grassley**. Yes. Really, it ought to be very easy for you to help us on this, because the legislation that has been passed by the House and thus far considered in the Senate is not even as strong as what your own department has proposed in that area.

Mr. **Bolton**. Right. There are some differences, but I do think we can work these out.

Senator **Grassley**. Thank you.

Thank you, Mr. Chairman.

Senator **Heflin**. Senator Thurmond?

Senator **Thurmond**. Mr. Bolton, we are glad to have you with us, and we appreciate your good work down at the Department.

Mr. **Bolton**. Thank you, Senator.

Senator **Thurmond**. The budget request which you have made would require an additional $7.2 million for the Civil Division's Automated Litigation Support Program. Briefly describe the nature of this program and how its costs can be justified, and explain its importance to the Civil Division.

Mr. **Bolton**. Basically, Senator, Automated Litigation Support is a way that the Civil Division has developed to take cases that have massive document production or massive numbers of depositions and be able to take all of the data included in the documents and the depositions and be able to analyze it and handle it in a way that we can process efficiently for purposes of pre-trial discovery and for trial.

The cost of the ALS Program is substantially smaller than the cost if we brought on additional full-time lawyers, paralegals, and clerical support personnel, and what it really does is substantially augment the Division's ability to litigate massive, complex cases. Although the cost in millions of dollars may seem high, the risk to the Government is in losing some of these cases that are supported by ALS that could result in judgments of billions of dollars against the Treasury.

Senator **Thurmond**. I noticed a chart up there. Is that your chart?

Mr. **Bolton**. Yes, that is one of ours.

Senator **Thurmond**. Would you explain that to us?

Mr. **Bolton**. That is so that these dry budget numbers don't overwhelm us, to show the importance to the work of the Civil Division and really to all of the various aspects of it that Automated Litigation Support provides. Because of limited resources in the budget now, we have only been able to use ALS for a relatively small number of cases, even though a substantially greater number would warrant it. So we are hopeful that we can persuade the committee and the Congress that the more than $7 million increase in ALS that we have requested is fully justified on behalf of the Government.

Senator **Thurmond**. I notice there are a lot of people there in the water who look as though they might drown——

Mr. **Bolton**. They are about to go under, Senator.

Senator **Thurmond** [continuing]. And there is a lifeboat called "ALS Lifeboat", and I guess that's going to save them, is that right?

Mr. **Bolton**. I certainly hope so.

Senator **Thurmond**. Although you have not requested an increase in staff positions, I understand the Civil Division has experienced an increase in litigation within its various branches. Can you please tell the committee where there have been increases?

Mr. **Bolton**. Senator, there have really been increases all the way around. The increases in commercial litigation, for instance, have been particularly substantial. When an industry that is regulated or subsidized by the United States runs into difficulty, very frequently there are substantial bankruptcy matters that occur. That has occurred, for instance, in the maritime industry and in the rural electrification industry, so that the dollar value of claims there has gone up. In the aviation industry, in the Torts Branch, for instance, where there are substantial aviation disasters, very frequently claims are filed against the United States that could result in hundreds of millions of dollars of liability.

These cases tend to be extremely complex and involve a lot of attorneys and lot of staff time. The result of the litigation and trial then translates into further litigation on appeal, which burdens the Appellate Division all the way around. So it is an overall increase on a variety of different fronts.

Senator **Thurmond**. You have discussed the importance of the funding for Automated Litigation Support. Does this program give the Civil Division an advantage over opposing parties in the handling of documentary information?

Mr. **Bolton**. Senator, I don't think it gives us an advantage. I think in the case of private counsel, it just puts us on a par. One of the cases that I mentioned earlier, the Delta crash at the Dallas-Fort Worth Airport, when we were very short of ALS support earlier, almost forced us to settle a case that we are now hopeful of winning. As I say, a relatively small expenditure of Automated Litigation Support dollars now can save the Government many, many more down the road.

Senator **Thurmond**. Could a lack of funding for this program result in the Civil Division's settling of cases which should be tried simply because they are inadequately prepared for trial as compared to the opposition?

Mr. **Bolton**. Absolutely. There was a case involving the Daewoo Corporation where we had been seeking penalties in excess of $160 million that we had to withdraw before trial simply because we could not effectively prepare for it.

Senator **Thurmond**. As you are aware, Congress enacted the Immigration Reform and Control Act of 1986—I believe that was the second session of the Ninety-Ninth Congress. In your prepared statement, you refer to the statute as having triggered numerous lawsuits which have become the responsibility of the Civil Division. Could you please describe to the committee the nature of these suits and what you anticipate for the future?

Mr. **Bolton**. The wave of suits that we have experienced so far have been largely targeted on the implementation of the legalization effort by the Immigration and Naturalization Service. Typically, these have been class action lawsuits on behalf of relatively large numbers of plaintiffs interested in getting into the legalization program. With the close of the amnesty period, we expect those suits to be resolved without too much further ado, but we are now in the position where applicants for legalization are going to have potentially thousands and thousands of individual suits, challenging governmental determinations of their eligibility for the legalization program.

In addition, as you know from your involvement in it, the second aspect of immigration reform—the first being amnesty for certain illegal aliens—the second was employer sanctions. And as we get to the point where employer sanctions begin to take effect and proceedings are brought against employers who are in violation of those provisions, there would be substantial additional litigation on that front as well.

So although we hope to avoid as much of it as possible, every realistic analysis that we have indicates a very substantial increase in that area.

Senator **Thurmond**. Mr. Bolton, in your prepared statement, you refer to the adverse effects of the Supreme Court's decision in *Westfall* v. *Erwin*. The Court held that Federal employees facing legal action are not necessarily immune from personal liability for common law torts simply because they are acting within the scope of their employment. Briefly discuss the short-term and long-term impact of this case, if any, on the Civil Division.

Mr. **Bolton**. Senator, the short-term impact is that on the large number of pending tort cases, cases that were pending when the *Westfall* decision was handed down, we have had to re-examine our defenses of those cases to take into account the Supreme Court's holding that immunity only applies where the individual employee is exercising governmental discretion and have had to reassess our chances on the merits in those cases, and that has involved a substantial amount of work.

Over the long term if, as we project, there is a substantial increase in the number of Federal employees who are sued in their individual capacities, there will be a commensurate increase in the work of the Civil Division or, alternatively, and perhaps even more expensively, an increase in our need to retain private counsel to represent Federal defendants when there is a conflict among their various defenses that we cannot resolve and for which we have to turn to private counsel to provide representation.

Senator **Thurmond**. Have you all prepared a bill that you think might offset that decision?

Mr. **Bolton**. Yes, Senator, we have, and it has been introduced by bipartisan sponsorship, Congressman Frank and Congressman Shaw on the House side. We are hoping to get similar bipartisan sponsorship on this side and hopefully to get as expeditious action as we can to protect, really, the rank and file civil servants.

Senator **Thurmond**. As the ranking member, I haven't received anything on that. Maybe the Chairman of the committee has. But I think you ought to get a bill right away and see if we can't get it introduced with bipartisan support.

Mr. **Bolton**. Absolutely. We will get it to you right after this hearing, Senator.

Senator **Thurmond**. That's all, Mr. Bolton. Thank you very much.

Mr. **Bolton**. Thank you.

Senator **Thurmond**. Thank you, Mr. Chairman.

Senator **Heflin**. Senator Metzenbaum?

Senator **Metzenbaum**. Thank you, Mr. Chairman. I am sorry that I was late, but I was all the way out at the Sheraton when I got a call that this meeting might conclude earlier.

Nice to see you again, Mr. Bolton.

Mr. **Bolton**. Nice to see you again, Senator.

Senator **Metzenbaum**. As you know, Mr. Bolton, this committee did not exercise its prerogative to hold confirmation hearings on your appointment to head the Civil Division. In light of some disturbing reports about your management so far, particularly the matter concerning your denial of an unpaid maternity leave request from one of the Department's top attorneys, I am frank to say to you that I think I wish we had held hearings.

Now, I am aware of the fact that you discussed this matter earlier this morning with the Chairman, but as I see it, the attorney, Joan Bernott, is a 42-year-old mother of 5-year-old twins and a 10-pound baby girl born in January after a difficult pregnancy. Her record and integrity are reported to be impeccable: ten years of service to the Department, a member of the elite Senior Executive Service, a recipient of numerous commendations and promotions. In short, she is a woman who has made it despite all the barriers faced by women in this society. And for her effort, what is her reward?

It is that, come May 31, she will be considered AWOL and in danger of losing her job if she doesn't obey your order to report back to work.

Physicians' statements that returning to work now would jeopardize her health apparently weren't enough to satisfy you. They weren't administratively acceptable, although you had—and I think that is your quote—although you had no medical basis for that conclusion. You seem to have turned a routine personnel matter into a personal vendetta, replete with charges of fraud and interrogatories and hostile letters hand-delivered to Ms. Bernott's home, meetings with court stenographers, transcripts, and attorneys. You even reportedly interfered with her representation by counsel she retained when you made her feel she was being treated like a criminal.

I guess I have to say, Mr. Bolton, what message does all this send to other women in the Department, to hard-working, dedicated women in the country, trying to achieve success without losing their health and their families; and what does it say with respect to your own fitness for the position that you occupy? At a time when you say the Division's work load is so great, I would see it as probably reflecting rather poorly on your judgment to be spending so much of your own time in that which would appear to be harassing one of your own best people.

I have some questions, but I wonder if you would want to comment on that?

Mr. **Bolton**. I welcome the opportunity, Senator. As you may know, before you were able to arrive, I answered a series of questions by the Chairman, and I would respectfully refer you back to them. But let me comment, because I think I'd like you to hear it from me directly as well.

Number one, I have not denied Ms. Bernott leave without pay. In fact, I have granted her 6 weeks of leave without pay to date. The question is whether at this point she is entitled to 10 weeks of additional leave without pay.

The only issue between Ms. Bernott and me at this point is whether she will submit additional medical justification that would warrant that leave. When I received her request, I asked my career people what the median maternity leave within the Division for people of her approximate rank was, and I was told that the median was between 12 and 16 weeks. She has asked for 28 weeks, which is double the median. Now, that's not to say that she may not be entitled to it, but I think as a manager responsible for the work of a Division that does have a substantial overload, that I need to be satisfied that there is sufficient reason for it. So I asked her that.

In fact, at her request I met with her on April the 21st, and I don't mean to burden the other members of the committee but I would like to read to you some passages from the transcript of that meeting, because I think it is important.

I would refer you, Senator, to a statement—and I will be quoting from a transcript of Mr. Wiggins, who is Ms. Bernott's attorney, and I am quoting now.

Mr. Wiggins said: "And as I think Joan told you, or your secretary, or whoever it was that she spoke with over the telephone in arranging the logistics of this meeting, we had sought to arrange a time for a meeting at which we could have Dr. Chase"—who is the doctor who has submitted a letter on Ms. Bernott's behalf—"with us so that she could say directly to you what it is that she said to Joan, and your schedule and hers didn't permit that, apparently."

Senator **Metzenbaum**. Whose note is that?

Mr. **Bolton**. That is the statement by Mr. Wiggins, who is Ms. Bernott's attorney, and he said that on April the 21st, that he wanted to have Dr. Chase, Ms. Bernott's physician, "with us"—and I am quoting—"so that she could say directly to you what it is that she said to Joan."

And I said later that I would be willing to make myself available to meet with Dr. Chase at her convenience. I had not been aware, Senator, that there had been a request to bring Dr. Chase to the meeting, but I said at the meeting that I would be more than happy to make myself available to meet with her.

Later in the meeting, if I might just give one or two more quotes, Mr. Wiggins and I had the following colloquy—and again, I am reading from the transcript.

Mr. Bolton: "I think where we need to leave it is we'd like to hear some more from the doctor."

Mr. Wiggins: "Sure."

Mr. Bolton: "And preferably sooner rather than later."

Mr. Wiggins: "Good."

And then one other point you brought up that follows right from that, if I could read it. Ms. Bernott then says: "Does that mean, John, that I am not under investigation?"

I said: "You are not under any investigation at all."

And then finally, Senator, if I could, just one more. Again, later in the transcript, Mr. Wiggins says: "And we'll get you a clearer statement of Dr. Chase's opinion. And you know, there has been some confusion. I think we can put it behind us, and that's good."

Mr. Bolton: "Okay. We'll wait to hear back from you then."

Mr. Wiggins: "Excellent. I appreciate your time."

So Senator, the issue here is really a very narrow one, and I said before you came in, and I'll say it again, I hope Ms. Bernott reconsiders and provides us with the additional medical substantiation. If you or your staff are in touch with her or with her attorney, I would very much urge that you ask her to do that.

We are not looking to make this into a cause celebre; we are looking to try and treat her equitably as we would other members of the Division, and that's all we've asked for, and her attorney at one point agreed to it. So we are simply asking her to return to the position that she apparently held as recently as April the 21st.

Senator METZENBAUM. Mr. Bolton, on April 21, there was that meeting. I have before me a letter addressed to you, John Bolton, dated April 28, 7 days later. It is signed by Mr. N. Frank Wiggins. In that letter, it says: "In my analysis, what controversy there is concerning the propriety of a further leave for Ms. Bernott is extinguished by a single sentence from Dr. Chase: 'Return to work now, in my opinion, represents health risk to this patient.' You were quite clear in the course of our meeting that it was inconsistent with departmental policy to insist that an employee follow a course of conduct that would entail medical risk."

And he then quotes you, Mr. Bolton: " 'Well, I am saying again that we are not going to ask Ms. Bernott to do anything that jeopardizes her health.' " End of your quote.

Then he goes on to say: "Unless you have good reason for concluding that a medical opinion on the issue of health risk, other than that of Ms. Bernott's regular physician, should govern, it seems to me plain that additional leave is now conclusively in order."

Did you not receive that letter from Mr. Wiggins?

Mr. BOLTON. Yes, Senator, I did. And I don't believe it answers the question that I put to him and what I thought he had agreed to in the meeting.

If I could give you one other fact here, on March the——

Senator METZENBAUM. Well, tell me what question it doesn't answer.

Mr. BOLTON. It does not in my judgment provide the additional substantiation for the leave. That is all we are asking for.

Senator METZENBAUM. What are you asking for? Here is a quote from the doctor: "Return to work now, in my opinion, represents health risk to this patient."

Now, what more do you need than that?

Mr. BOLTON. Let me give you some background on that, if I may——

Senator **Thurmond**. Is it the doctor's statement you want, or just what?

Mr. **Bolton**. We want additional substantiation in light of several other things that have transpired in this matter.

Senator **Thurmond**. That's the lawyer's statement there, as I understand it.

Senator **Metzenbaum**. No, no. This is the doctor's statement.

Senator **Thurmond**. He's quoting the doctor, but the doctor didn't send the statement, did he?

Mr. **Bolton**. Ms. Bernott's lawyer, as I read from the transcript, had offered to make her physician available to answer other questions for us, and then subsequently, that offer was withdrawn.

All we are asking for is additional substantiation based on the fact, among other things, that when Ms. Bernott first asked for leave until August the 15th, she cited no medical reasons. Indeed, one of the reasons she cited was that she wanted to go on a trip to Switzerland and would return from the trip to Switzerland 3 days before August the 15th.

Senator **Metzenbaum**. Let me get this straight, because maybe there is a controversy without a basis. Are you saying that you don't accept this quotation from her lawyer as to the doctor's statement? Is that what you are saying?

Mr. **Bolton**. I am saying, Senator, that based on what we have received from her physician so far, I don't believe there is an adequate justification for medical leave extending until August the 15th. If she could provide additional information that demonstrated that, then we would fully consider granting her the leave.

There is no effort—and your quotation from the letter is accurate—I have never said that we would do anything that would in any way jeopardize Ms. Bernott's health. That would be unconscionable, and we're not going to do it.

Senator **Metzenbaum**. Well, what is it that you want now? I'm not quite clear on that. Are you questioning Mr. Wiggins' quotation of the doctor's letter, or are you saying you don't have the original instrument, or are you saying you want the doctor to be physically present? I'm not quite clear what you are asking.

Mr. **Bolton**. No, I don't think we need the body of the doctor, necessarily. But if I could read Ms. Bernott's first letter requesting leave until August the 15th——

Senator **Metzenbaum**. No. I am not really interested in Ms. Bernott's first letter.

Senator **Thurmond**. Let him read it. He's got a right to read that, I think.

Senator **Metzenbaum**. Sure, he can read it. But I'm really asking him what he wants. I'm not asking him what Ms. Bernott——

Senator **Thurmond**. Well, she made a request, and he ought to be allowed to read that.

Senator **Heflin**. Now, let's let people ask their own questions. I don't want to have to be a judge. But let's let everybody ask the questions, and then they can answer the questions, and we'll give everybody an opportunity to ask whatever questions they want to.

Senator **Metzenbaum**. What I'm really asking you is what is it that you want now. You said you don't want the doctor to be physically present. We have the quotation of the doctor. If you are saying that you don't accept a quotation of a lawyer of a doctor's statement, I understand that. Do you want the original letter, signed by the doctor? Would that satisfy you?

Mr. **Bolton**. If I could, Senator, I don't mean to try and prolong this answer, but I think it is important for you to understand the basis of our concern here.

On March the 17th of this year, Ms. Bernott wrote her immediate supervisor in the Torts Branch that at the expiration of her borrowed sick leave, if it is authorized, and her earned sick and annual leave:

> I wish to take leave without pay until Monday, August 15, 1988. This leave without pay would make a total maternity leave since January 25th, 1988 of just under 8 months. My desired return date is three working days after my scheduled return from a trip overseas that I must make as a family obligation. This date also seems to be quite acceptable to Robert Kopp, to whose office I expect to be detailed at the time.

Now, that's her letter requesting the extension of her maternity leave until August the 15th.

Senator **Metzenbaum**. What is the date of that letter?

Mr. **Bolton**. March 17.

Senator **Metzenbaum**. But now——

Mr. **Bolton**. Excuse me, Senator, if I could please just finish that thought.

Senator **Metzenbaum**. Please finish.

Mr. **Bolton**. That letter makes no reference whatever to health concerns. It does refer to a trip to Switzerland that would end about 3 days before the date she desired to return to work.

A couple weeks after that, we got another request with a doctor's letter that was very conclusory about her health reasons. And in the face of that, I felt that there was some burden on me as a responsible manager to ask for additional justification. And that is all I have done.

Senator **Metzenbaum**. Well, now, let me get this straight. Now I understand you do have the letter which includes that quote that I read you in Mr. Wiggins' letter; the doctor's original letter, you have that, is that correct?

Mr. **Bolton**. That's correct.

Senator **Metzenbaum**. And that doctor's letter does say that "Return to work now, in my opinion, represents health risk to this patient."

Do you happen to know the date of that letter?

Mr. **Bolton**. I have it here, Senator. I think I could get it. I believe it is sometime in March.

Senator **Metzenbaum**. April 26th? Does that sound——

Mr. **Bolton**. There are two letters from her physician. One is dated 28 March, and I am afraid I can't put my finger on the other letter just now.

Senator **Metzenbaum**. Now I am really confused. You are saying that if there is a medical basis, then you have no quarrel about her having extended leave. But then you are relating it back to the fact that she had requested an extended leave back in March and the fact that she was going to take a trip to Switzerland, did you say?

Mr. **Bolton**. Right.

Senator **Metzenbaum**. But she could very well take a trip to Switzerland and need it for medical reasons, and you might also be doing it because you are not able to go back to work.

Mr. **Bolton**. Senator, if her trip to Switzerland were for Medical reasons, we would grant it. As I understand it, her trip to Switzerland is to go to her husband's brother's wedding.

Senator **Metzenbaum**. Well, let me ask you—now you are getting into what she is going to do in the period when she is not back at work, and that period being when the doctor is saying to her: You shouldn't be going back to work.

Do you question the doctor's authenticity? Do you question his representation?

Mr. **Bolton**. It is a "her", Senator. The doctor says that she is suffering from chronic fatigue.

Ms. **Bernott**. Excuse me——

Mr. **Bolton**. This is Ms. Bernott. If you want to have Ms. Bernott testify, that's more than acceptable to me.

I think this is a mistake, frankly, of politicizing a Civil Service decision, but I am happy to have it happen.

Senator **Metzenbaum**. We may ask Ms. Bernott to testify, but right now, you are testifying.

Mr. **Bolton**. Certainly.

Senator **Metzenbaum**. And I am not clear on something. You have got me confused. As I see it at the moment, it appears to me that you think that she wants this extended leave in order to go to Switzerland for the wedding. But the doctor is saying that she has a degree of fatigue.

Now, if you had a degree of fatigue, you wouldn't have to sit in a bed or just sit before your own TV set; you could very well go to Switzerland, and you might go to Hawaii, or you might go to any one of a number of other places.

But I almost get the feeling, Mr. Bolton, that in your mind, you have concluded that there is something specious about her illness, and you don't accept the representation of the doctor that indeed, returning to work now represents a health risk to this patient. Is that correct?

Mr. **Bolton**. Let me add one other facet to this, if I could——

Senator **Metzenbaum**. Well, just answer me—is that correct?

Mr. **Bolton**. I think that in light of this record—and there are other aspects that we haven't had a chance to go into—that a good manager should seek additional medical substantiation.

Her doctor said in fact that Ms. Bernott should take off, really, not until August 15, but October 15, and that it was for other reasons that Ms. Bernott decided to ask for August 15 as her return date. I don't think they are appropriate to get into here.

But I think if you are faced—let's take a hypothetical situation where a doctor might say this patient needs 1 month of rest. The doctor might have said 7 months of rest. The doctor might have said 12 months of rest. The doctor might have said 17 months of rest—the point being that when a request like that comes in, it is appropriate, given the nature of the position that Ms. Bernott holds down, to be sure that we are equitably treating her request. And all that I have asked for—it is really a very simple matter, Senator—is sufficient medical justification to grant it.

I don't want to publish her medical records in the Washington Post. I think that would be unconscionable. All we are asking for, as any good manager would, is give us the additional justification.

Senator METZENBAUM. What additional justification? The doctor says to you she needs the additional rest. Now, what do you need more? Do you want two more doctors? Do you want to have her examined yourself? What are you saying?

Mr. BOLTON. No, Senator, certainly not, certainly not.

Senator METZENBAUM. Well, what are you saying? You've already got one doctor who says that she needs the rest.

Mr. BOLTON. Well, as I mentioned and quoted to you before from the transcript of the April 21 meeting, there had been a time when I thought we were going to get additional clarification from the physician, or indeed, perhaps speak with the physician herself. Since that time——

Senator METZENBAUM. You told me just a minute ago you don't want to speak to the physician.

Mr. BOLTON. I would be happy to speak with her if that is what Ms. Bernott wants. I'd be happy to have her speak with career personnel people within the Department of Justice. I'd be happy to accept a number of alternatives.

But what Ms. Bernott has said is: I want what I want, and I'm not going to tell you why. And Senator, I must tell you, I just think that's not acceptable.

Senator METZENBAUM. Wait a minute. She said to you at one point that:

> No female executive with any brains relies on maternity-related health disability for leave if she doesn't have to. She doesn't spread it around, either. She doesn't broadcast her poor health.

She brings in a doctor's statement, and you are not satisfied with it.

Mr. BOLTON. Because of the other elements of the record, which I have discussed before, that's correct. And I think——

Senator METZENBAUM. The other elements are that she may go to Switzerland——

Mr. BOLTON. That her initial request for leave until August the 15 made no reference whatever to her health; none.

Senator METZENBAUM. Okay. Let's go backwards. In March, she asked for an extension, and she doesn't tell you that it is a medically-connected matter because maybe she is a little bit embarrassed; maybe she doesn't want to tell the whole world that she has some medical problems. And frankly, frankly, Mr. Bolton, you well know that many women get an illness, and I don't remember the name—post partum depression; I forget the phrase, but I have heard it very often, and I am the father of four daughters, three of whom have children—and I know that there is this talk of women, after having had a child, oftentimes go into a depression state.

Now, does an employee who is asking for an extended leave have to bare her whole soul, and does she have to say to you: "Frankly, Mr. Bolton, I'm just depressed"? That takes some courage.

So she asks for an extended leave. You say no and want to know why, medically. She brings you in the doctor's statement. The doctor says she is not able to come back to work.

What is it that you want more? What is it you want more? You said you don't need the doctor to appear personally. Do you want the doctor to write a second letter? What is it that you are asking for—for her to come in and say, "Mr. Bolton, I didn't tell you the whole story. I was depressed at the time."

What are you seeking? What are you making a cause celebre out of it for? Isn't it the fact that maternity leave requests commonly have been 4 to 6 months in your department?

Mr. Bolton. The requests for maternity leave have been 4 to 6 months. I think you are referring there to a letter of several years ago that refers to requests being 4 to 6 months. That particular answer also says it is difficult from existing department records to know what was granted, not what was requested.

But let me say, Senator, that this is not a question of maternity leave. If any employee, male or female, came to a supervisor in the department and asked for extended leave without pay for medical reasons, the manager of whom that request was made has a responsibility to the Government to ensure that the request is justified.

If I could please just continue here, I was not aware that Ms. Bernott said that she was depressed and therefore didn't want to tell me; and I'm also not interested in widescale notice of it or anything else. I'm perfectly content to work out whatever protections there might be. I am content, frankly, Senator, to rely exclusively on the judgment of the career personnel people within the Department of Justice as to whether this is justified.

But I think it would be a mistake for a manager simply to say when an employee says, "I'm going to get what I want, and I'm not going to tell you," to accede to that.

You referred to this becoming a cause celebre. Senator, I didn't go to anybody on the Hill, and I didn't go to the press with it. I didn't make a cause celebre.

Senator Metzenbaum. What do you want now, Mr. Bolton? What do you want?

Senator Heflin. We are really now 30 minutes into the time that was allotted for a hearing on another bill. If you could, Senator Metzenbaum, take another 5 minutes, and then Senator Thurmond, if he has questions.

Senator Metzenbaum. What do you want now?

Mr. Bolton. We have put to Ms. Bernott a series of questions. Her reaction to that has been: I'm not going to answer any of them. If Ms. Bernott has adequate justification, I am quite content to work out whatever——

Senator Metzenbaum. Could you read the questions, please?

Mr. Bolton. Pardon me?

Senator Metzenbaum. Read some of the questions. Do they have to do with medical matters?

Mr. Bolton. Yes, they do.

Senator Metzenbaum. Read some of them.

Mr. Bolton. We asked Dr. Chase, for instance, "How long has Joan Bernott been your patient?"

Senator Metzenbaum. You asked the doctor that?

Mr. Bolton. Dr. Chase, right.

"Did you see or treat Joan Bernott during her most recent pregnancy?"

We asked how many times she saw or treated Ms. Bernott; the nature of Ms. Bernott's medical conditions or the symptoms that prompted her visits; the treatment she prescribed, and it goes on like that.

The reason that we asked these questions was to give the physician some idea of what we felt would be useful to satisfy us that there was substantial medical justification.

We are not seeking to put all this on the front page of the Washington Post, but I am aware in other contexts where physicians have given substantially more than just a conclusory statement about somebody's medical condition, and that a good manager feels that in the exercise of his or her responsibilities, that that additional justification is necessary. That is all we have asked for.

Senator METZENBAUM. Do you think these questions are proper to the doctor—I think some that you just asked are proper.

Mr. BOLTON. If Ms. Bernott thought that any one of the ones we asked was improper, I would be more than happy to consider dropping it. She has refused to answer any of them. Her answer is no, no, no, no.

Senator METZENBAUM. Let me ask you this question. If she eliminates the questions in the doctor's inquiry that she feels are a personal invasion of her privacy—and I would suggest to you that you might go back at your own list and look at it, where you ask "Did Ms. Bernott advise you during her March visit of her planned trip to Geneva in August 1988?"—I'm not certain that that is an appropriate question to ask a doctor.

Mr. BOLTON. I think it is. I think it is, Senator. If somebody is saying that I suffer from chronic fatigue, I think that a physician may well want to inquire if there are not appropriate restrictions on the person's travel, the strenuous activity, a whole range of things that I would not be competent to judge. I think that is something that is worth looking into.

Senator METZENBAUM. Well, I see some other questions that I have some reservations about and that I would really question. But I would like to see this matter amicably resolved, and I would like to see this woman, who is not asking for anything that I find to be unreasonable in view of her doctor's statement, granted that leave. I think that frankly, Mr. Bolton, it is a matter that has grown out of all proportion to what is involved because, as I understand it, there have been other leaves of six other women who got 5 months to a year in the last 3 years. I am not sure why you have made this into this kind of a matter, but my own feeling is it ought to be resolved amicably and promptly, and it would seem to me that there is justification for the request. I am going to ask my staff to be in touch with you to see whether or not it cannot be amicably resolved. I think it is not worth a person who holds the position you hold to be making that much of a thing out of this matter.

Mr. BOLTON. Senator, I appreciate those remarks, and let me say I had no great desire to be here today to testify on this; I didn't go to the Hill with it, and I didn't go to the press with it. And if it has become this much of a cause celebre, I haven't welcomed it, believe me. If we can get appropriate medical substantiation, then we will act accordingly.

Senator HEFLIN. Senator Thurmond, do you have any questions?

Senator THURMOND. I wondered why we had television crews here this morning; I understand now—so questions would be asked to try to discredit the Justice Department. I think that's the purpose of it. That is the purpose of these televisions—to try and discredit the Justice Department this morning.

Mr. Bolton, I want to commend you for trying to protect the interests of the taxpayers. Everyone ought to be reasonable in matters of maternity. It certainly ought to be fair, and I am in favor of that in every way. But what is the usual maternity leave, about how many months?

Mr. BOLTON. We checked within our Division, Senator, and for people roughly of Ms. Bernott's rank, in the nature of 12 to 16 weeks.

Senator THURMOND. Three and a half to four months.

Mr. BOLTON. Three to four months, right.

Senator THURMOND. Well, how much did you give her?

Mr. BOLTON. So far, we've given her 18 weeks, about four and a half months, and she has asked for 10 weeks more.

Senator THURMOND. You have given her four and a half months, and she has asked for 10 weeks more?

Mr. BOLTON. That's correct.

Senator THURMOND. Well, now, are you waiting to get substantiation now? Is that what you have asked for, to get substantiation as to whether her request is reasonable?

Mr. BOLTON. Yes, sir.

Senator THURMOND. And she has failed to furnish it?

Mr. BOLTON. Yes, sir.

Senator THURMOND. That's all I have to say, Mr. Chairman.

Senator HEFLIN. Thank you, Mr. Bolton.

Let me say that this is an individual issue, but it also raises a very fundamental issue in this year 1988 and coming years. And whether it be in this committee or whether it be in other committees such as Government Operations, I think there is definitely a need for a policy, and not just strictly discretion left to an individual, pertaining to matters that arise here, and which will be fair to employees and fair to the Government. And I think it is an issue that needs to be investigated and to try to adopt some general overall guidelines that can be fair to all parties concerned. And I think it is an issue that we are now faced with and we are going to have to give considerable thought to.

Mr. Bolton, we thank you for your testimony. There may be written questions, as I previously stated to you, and we appreciate very much you being here.

We will stand in recess for about 4 minutes while there are changes that have to be made by the personnel, pertaining to the table and other things.

[Whereupon, at 10:40 a.m., the committee was adjourned.]

[The following responses to written questions were subsequently supplied for the record:]

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 20, 1988

Honorable Joseph R. Biden
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Mr. Chairman:

The letter of your Chief Counsel, Mark H. Gitenstein, to the Assistant Attorney General, Civil Division, of June 1, 1988, sought a response to questions submitted by Senator Alan K. Simpson. Enclosed are our answers to his questions.

I very much appreciate your and Senator Simpson's interest in the important work of the Civil Division and will be pleased to answer any additional questions you may have.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosure

estion: You have made reference in your testimony to the significant number of overtime hours spent by your attorneys and the need for the increased funding of the automated litigation support program so that these attorneys may have the technical support necessary. Do you believe that the increased automated litigation support program and technical services available to these attorneys will be sufficient to provide them with the tools necessary to meet the increasing demands on the Civil Division? To ask it another way, do you expect there will be a need for an increase in staffing in the FY 1990 budget request? Perhaps the Department should consider farming out more of its work and resources to the U.S. Attorneys who are spread throughout the United States and I would suggest are most intimately involved with cases "in the field."

Answer: We believe that we can continue to meet our growing litigation workload through FY 1989 with the additional $2.2 million we are seeking to cover uncontrollable cost increases and the additional $7.2 million we are seeking for our automated litigation support program. This level of funding, while it will certainly not eliminate the need for our attorneys to continue to work a considerable amount of uncompensated overtime, will make it possible for us to operate without additional staff. It will enable us to maintain staffing at our currently authorized level and provide our attorneys the level of technological and contractor support services needed to achieve and maintain a semblance of parity with our opponents in the largest and most complex of our cases. If we do not receive these additional funds, however, we will be forced to reduce our employment level in order to absorb inflationary cost increases and forego automated litigation support, and thus increase the risk of losses, in a number of cases involving large monetary claims against the Government.

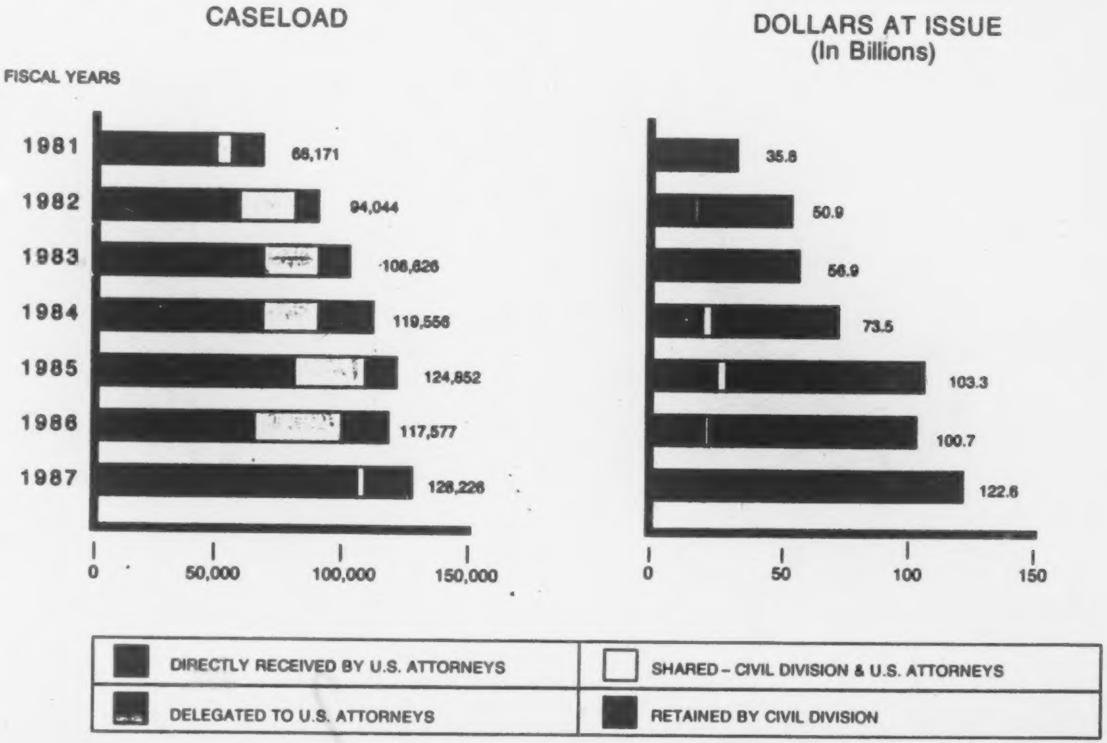
I fully agree with your position that most cases are best litigated by the U.S. Attorneys "in the field." This has been the policy of the Attorney General under which the Civil Division has been operating since 1981. All cases under the jurisdiction of the Civil Division are assigned to the U.S. Attorneys for litigation unless there are compelling reasons to retain them for personal handling by our attorneys. In 1981, only 65 percent of these civil cases were handled by the U.S. Attorneys at the local level. Their authority to settle and compromise cases was limited to those involving claims of less than $60,000. In 1987, 82 percent of the civil cases were litigated by the U.S. Attorneys and they had full authority to settle and compromise cases up to $200,000.

The Civil Division's attorneys personally handle only those cases which are (1) in centralized courts such as the Court of International Trade, the Claims Court and the Court of Appeals for the Federal Circuit, (2) in foreign courts, (3) in specialized areas of nationwide litigation such as asbestos, or (4) in specialized areas of the law such as patents and admiralty. More than 92 percent of the cases the Division's attorneys personally handle meet at least one of these four criteria. The remaining 8 percent are district courts cases and could conceivably be assigned to the local U.S. Attorneys for litigation. We retain this small percentage of district court cases for handling by Division attorneys because they involve extremely large amounts of money, significant government-wide olicies or extensive dealings with agency officials in Washington or because the responsible agency official or the U.S. Attorneys for the districts involved, specifically request that we do so.

This policy and its impact on the respective resource needs of the Civil Division and U.S. Attorneys has been fully reflected in the Department's annual budget requests since 1981 including the pending request for FY 1989. While the Department sought no additional staff for the Civil Division for FY 1989, the request for the U.S. Attorneys includes an increase of 172 new positions to handle the increasing volume of civil cases assigned to them.

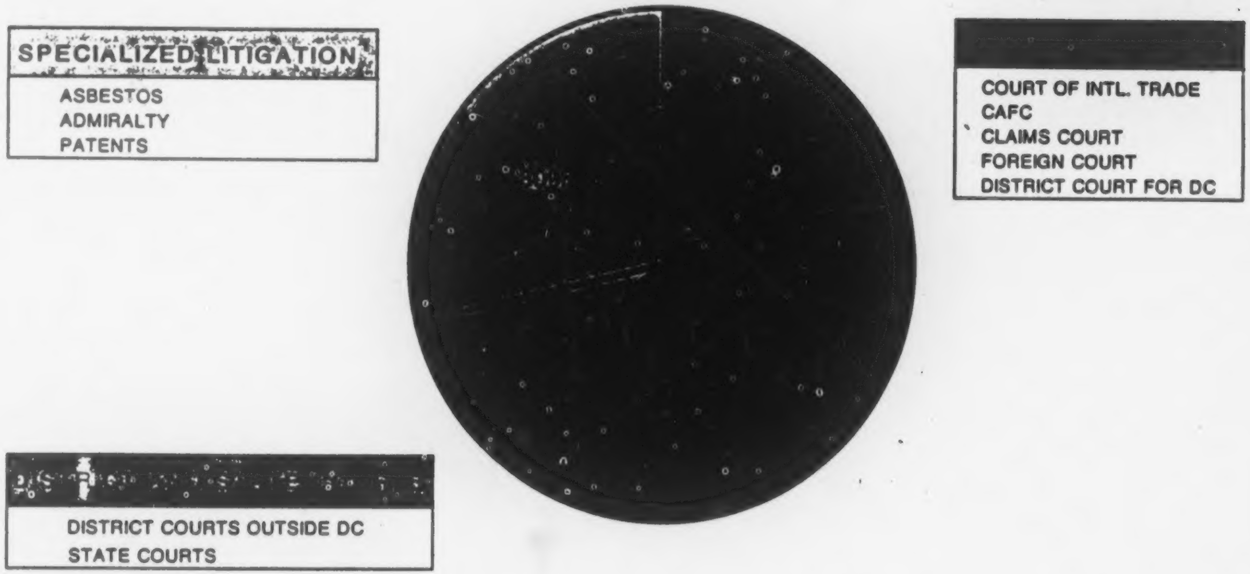
The two charts which follow provide additional information on our case assignment practices. The first shows the distribution of Civil Division cases between the Division and U.S. Attorneys and illustrates how that distribution has changed over the past several years. The second shows the nature of the cases retained for litigation by the Civil Division.

DISTRIBUTION OF PENDING CIVIL TRIAL COURT LITIGATION



CIVIL DIVISION

DISTRIBUTION OF
1986 PENDING PERSONALLY/JOINTLY HANDLED CASELOAD
18,638 TOTAL CASES*



* DOES NOT INCLUDE PRE – AUTHORIZATION FRAUD MATTERS

DEPARTMENT OF JUSTICE CRIMINAL DIVISION AUTHORIZATION FOR FISCAL YEAR 1989

TUESDAY, MAY 24, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Dennis DeConcini (acting chairman) presiding.

Also present: Senators Thurmond, Specter, Grassley, and Simon.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeConcini. The Judiciary Committee will come to order.

Mr. Keeney, we welcome you to the Judiciary Committee authorization hearing on the Criminal Division of the Department of Justice. Although you appear here before the committee as Acting Assistant Attorney General, I assume you have been fully briefed and are knowledgeable because of your long experience with the Criminal Division and the activities therein.

Recent developments in the Criminal Division have given me cause, and many of us cause for concern. The resignation of Assistant Attorney General Weld, special counsel Mark Robinson, and special assistant Jane Serene would seem to indicate that all is not well in that particular division.

In my opinion, the ongoing saga of Attorney General Meese and his questionable activities has been a negative influence on the Department of Justice, especially the Criminal Division. I am very interested in learning how the numerous controversies have affected the division.

I am also interested in asset forfeiture. I would like to know how the division is attempting to reduce the processing time for administrative and judicial forfeiture. I believe that the processing time for administrative forfeiture averages more than 5 months. Processing of judicial forfeiture averages close to 18 months, I am told.

Now, we understand that many of those 18 months are attributable to delays in the courts, but I would like to know if there is anything the Criminal Division or DOJ, in general, can do to shorten this, or perhaps this Judiciary Committee of the legislative branch.

Mr. Keeney, I have received reports that there are a number of understaffed, dissatisfied U.S. Attorneys' offices. The Southern District of Florida is a particularly disturbing example. That office is called upon to prosecute a large number of drug-related criminal cases. Yet, I am told that there is a shortage of attorneys there.

Furthermore, I believe there will be personnel cuts of nearly 10 percent. Little seems to be happening to cope with this. The zero tolerance standard that has been adopted recently has increased the case load, but fewer attorneys and staff are being made available.

I realize that the Executive Office of U.S. Attorneys may not report to the Acting Assistant Attorney General. Nevertheless, I would like some answers to a few questions in this area. If you cannot provide them, I would ask that someone in the Department provide them to us.

There are additional areas which I intend to explore. I am interested in development of the National Obscenity Enforcement Unit. Another area on which I will question is the level of coordination between the Criminal Division and the U.S. attorneys. I will have questions which will touch on the OCEDEF task forces, organized crime prosecutions, narcotics prosecutions, office automation, and other topics.

Because of time constraints, we may not get to all of these questions today at this hearing. If that happens, we will submit the questions to you and if you could have your staff respond to them, I would appreciate that.

I understand that you have been with the Department for a long time, Mr. Keeney, and we compliment you on your career status and the fine work you have done in the Department of Justice.

If I am not mistaken, you have served as Acting Assistant Attorney General before. I am hopeful that your experience will result in additional insight into many of the areas we will be discussing today.

We thank you for your cooperation, Mr. Keeney. You may proceed. Your full statement will be put in the record as if read, and you may proceed to summarize that for us. Any assistance that you want to have with you, please introduce them for the record, and you may proceed.

STATEMENT OF JOHN C. KEENEY, ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE; ACCOMPANIED BY DONALD A. CHENDORAIN, DIRECTOR, OFFICE OF ADMINISTRATION, CRIMINAL DIVISION

Mr. KEENEY. Thank you, Senator DeConcini. I will briefly summarize my statement and then leave whatever time there is for questions.

For 1989, the Criminal Division is requesting authorization for an appropriation of $52,819,000. The requested funds will provide for 794 staff positions to conduct our operations.

The request represents an increase of $2,311,000 over the currently authorized funding level for 1988. The increase includes the following: $1,069,000 in adjustments to the base for uncontrollable increases—that is $1,352,000—and non-policy decreases of $283,000. The non-policy decreases are simply that there are two less working days in the fiscal year.

We would request $1,242,000 in program increases. They would be, in the fraud area, an increase of 12 attorney positions, 8 support positions. And $1,052,000 is requested to assist in the investigation and prosecution of bank and defense procurement fraud cases.

Prosecution support: We are increasing an increase of five support positions and $190,000 to assist in the speedy and appropriate disposition of petitions for remission and mitigation, and for equitable sharing request.

Mr. Chairman, that concludes my summary statement. As you say, my more detailed statement is in the record. I will be pleased to answer any questions you may have, sir.

Senator DECONCINI. Thank you, Mr. Keeney.

In 1960, the Criminal Division created organized crime task forces and placed them in major metropolitan areas where known organized crime activities took place. At that time, strike forces were located in areas where the Cosa Nostra or the mafia was most active.

Since that time, new organized crime groups have surfaced. These groups include the Colombia cartel, the Asian mafia, and others, which the original strike force planning did not take into account when locating in the particular areas.

In light of these new organized crime groups being located in areas where strike forces were not originally located, is the division reevaluating the effectiveness of the current strike forces and where they are placed, and are there plans or have there been plans to relocate any of these?

Mr. KEENEY. Are we reevaluating? The answer is yes. On relocation, the answer is probably no at the moment. Let me briefly tell you what we are doing in that area, Senator. We have made great progress against traditional organized crime, La Cosa Nostra.

From Boston all the way across to Los Angeles and down into the South and the Midwest, we have taken out the top leadership sometimes to the third level. We are satisfied that we have made some great accomplishments. We are also convinced that we have to keep up the pressure on La Cosa Nostra.

With that in mind, though, and getting more directly to your point, we have recognized that there are emerging groups that we have to address. Beginning about a year ago, we concluded that we had to look into and determine what further we should be doing with respect to Asian organized crime groups.

That resulted in a study being conducted in the Criminal Division in conjunction with the Federal Bureau of Investigation and with the assistance of a number of the State groups, particularly in California.

We came out with a study which focused—the initial idea was to look at all Asian organized crime. The study that we came out with focuses principally on Chinese organized crime, and we have put in place, Senator, or are putting in place, in conjunction with the strike forces—one in San Francisco, one in Los Angeles, one in Houston, one in Boston, and, of course, in the Southern District of New York—groups that are starting to look into this.

It is a difficult area. It is like we were in the initial stages of looking at La Cosa Nostra. We have the code of silence, we have the distrust of the Asian immigrants to deal with authorities based upon their historical experiences, but we have started.

Now, our next step will be some additional studies with respect to other Asian organized crime groups other than the Chinese. We did touch lightly on those in our report. We will do more as we go along.

As you know, we have looked at things like the bicycle gangs, and so forth, in the past, and we have concluded that although there are cases that the Federal Government should proceed on against, for instance, the bicycle groups, that for the most part that is a problem that can be handled locally.

Senator DECONCINI. How about the group known as the Jamaican Posse? Are you involved with the Treasury Department on investigating that as part of organized crime?

Mr. KEENEY. We are not at the moment, no, sir.

Senator DECONCINI. Are you aware of that particular group known as the Jamaican Posse?

Mr. KEENEY. I am sorry. I misunderstood your question. Jamaican Posse is one of the organizations we will be looking at.

Senator DECONCINI. And that falls into organized crime?

Mr. KEENEY. We define organized crime as the principal group involved in the principal organized criminal activities in a particular area. So in a particular area, it could be Jamaican organized crime. It could theoretically be Nigerian organized crime.

Senator DECONCINI. Going to a little different subject matter, your budget request is limited to increases in only two areas, fraud and asset forfeiture. Although I consider the recent escalation in bank fraud alarming and believe that white collar fraud must also be addressed, I am somewhat surprised that increases in organized crime protection and organized crime drug enforcement for narcotics and dangerous drug prosecution was not sought, or was not requested for an increase.

Why is the Criminal Division budget request limited to the increases in only these two areas, fraud and asset forfeiture?

Mr. KEENEY. Senator, we did request internally within the administration some additional resources and they were only granted with respect to the two fraud areas and asset forfeiture.

I might mention, though, with respect to narcotics, the primary thrust, as, Senator, you well know, is through the organized crime narcotics strike forces, the so-called OCEDEF program.

Our Narcotics Section provides support to the OCEDEF program, and it also provides assistance to the U.S. attorneys. But the primary thrust there is with the OCEDEF program and with the U.S. attorneys.

Senator DECONCINI. Is the OCEDEF program under you?

Mr. KEENEY. No, sir. It is under the Associate Attorney General.

Senator DECONCINI. Do you know offhand what the increase request was for that program?

Mr. KEENEY. I do not, sir.

Senator DECONCINI. Can you supply that for us?

Mr. KEENEY. Yes, sir.

Senator DECONCINI. Thank you.

[See appendix.]

Senator DECONCINI. Turning to U.S. attorneys, Mr. Keeney, under the current managerial make-up of the Department, who does the Executive Office of U.S. Attorneys report to, since there is no Deputy Attorney General?

Mr. KEENEY. The assignment has been changed. They now report to the Associate Attorney General. As you know, we have an Acting Associate, Frank Keating. So the Executive Office of United States Attorneys reports to him. There has also been a further change. The Immigration Service also reports to Mr. Keating.

Senator DECONCINI. Does the Criminal Division coordinate with the U.S. Attorneys offices? Do you work with them?

Mr. KEENEY. We work with them on a daily basis, Senator, yes.

Senator DECONCINI. Who would make decisions regarding staffing levels on individual U.S. Attorney Offices?

Mr. KEENEY. The executive offices, in conjunction now with Mr. Keating.

Senator DECONCINI. With Mr. Keating, and he has only been there a week. If I wanted to know why there were shortages in certain areas, particularly in south Florida, how would I find that information out?

Mr. KEENEY. Well, we would provide it to you through the executive office.

Senator DECONCINI. Can you find that out for us and supply it for the record?

Mr. KEENEY. Yes, Senator.

Senator DECONCINI. I am very concerned. Senator Graham of Florida has talked to me about it. I know he has been in touch with someone in the Justice Department regarding that southern district of Florida being staffed only at 90 percent. I think they are down from 108 or 110 U.S. attorneys there to something like 94 or 95, and I certainly would like, for the record and for Senator Graham, to have that information supplied for the record, if you would.

Mr. KEENEY. Yes, Senator.

[See appendix.]

Mr. KEENEY. I might just add that our experience is we have a strike force there. We have got 13 attorneys and 7 support personnel and they work—maybe 22 percent of their caseload is narcotics, and so we are familiar with the problem.

We have difficulty staffing adequately, getting the right type of personnel to put in the prosecutor's service in the Miami area, and I assume the U.S. attorney has the same problem.

Senator DECONCINI. Why is that, Mr. Keeney?

Mr. KEENEY. I do not know. One, it is a high cost of living area and, two, it does not seem to have the desirability that it once had. When I first started out, Miami was a highly desirable place for a prosecutor to be. It no longer seems to be.

Senator DECONCINI. That is not the case now?

Mr. KEENEY. That is not the case, sir.

Senator DECONCINI. Does that have anything to do with threats or danger of the job, or not?

Mr. KEENEY. I assume that that would be one of the factors, Senator.

Senator DECONCINI. You have not had any incidents, have you, by your strike force or the U.S. attorneys, or do you know?

Mr. **Keeney**. From time to time, we have had, and then Mr. Kellner—you know, there were threats against Mr. Kellner, the present U.S. attorney. To what extent they are inhibiting our ability to get people, I do not know, but I assume that it is a factor.

Senator **DeConcini**. Turning to asset forfeitures, Mr. Keeney, at the present time State and local law enforcement agencies may share in the forfeited assets if they participated in the investigation or seizure of the assets.

On a number of occasions, local prosecutors follow up the arrests or seizure with prosecution of the underlying criminal offense or forfeiture action. At the present time, local prosecutors are not eligible to share in the forfeiture assets by prosecuting these types of cases.

Do you see any reason why local prosecutors should not be able to share in the forfeiture assets?

Mr. **Keeney**. Senator, I did not understand that they are not eligible to share. Are you talking about local as distinguished from State?

Senator **DeConcini**. I am talking about the local district attorney. In the State of Arizona, they are called county attorneys. If they end up prosecuting a case that is a jointly-operated case of Federal and State, the prosecutor cannot share in the asset forfeiture, I am told, whereas the local sheriff or local police department could.

My question is do you see any reason why the local prosecutor, if they are doing the work prosecuting the case, should not be able to share in the forfeiture assets?

Mr. **Keeney**. No, sir, I do not.

Senator **DeConcini**. Number one, is legislation necessary?

Mr. **Keeney**. I do not know the answer to that, Senator. I would have to look into it. We will submit, if we may, on that question.

Senator **DeConcini**. Well, I would like to know is whether or not, in your judgment, legislation is necessary, and if so, would the administration take a position in support of that. I do not think it is a big deal, but I think it is important to be sure that the local prosecutors realize that they can participate. Obviously, they cannot use some of the weapons or planes or things that are picked up, but certainly cash assets and sometimes other radios and what have you might be of assistance to the prosecutors as well.

Mr. **Keeney**. Yes, sir, I agree.

Senator **DeConcini**. Thank you.

Mr. **Keeney**. We will submit.

Senator **DeConcini**. Thank you, sir.

[See appendix.]

Senator **DeConcini**. The budget request includes an increase of five support positions and $190,000 to administer asset forfeitures. In your written statement, you have mentioned that in 1987 the Criminal Division's expanded efforts contributed to the total asset forfeiture income of $177 million.

Of that $177 million, how much is attributed to the Criminal Division?

Mr. **Keeney**. I am afraid I cannot give you a clear answer on that, Senator. Can we get back to you on that?

Senator **DeConcini**. Can you supply that for the record?

I would like to know, also, as long as you are doing that, what is the increase for 1986 to 1987 and if you have any predictions of what you think the income for 1988 asset forfeiture efforts made to the division—I would like to know if you do any of that kind of projection.

Mr. **Keeney**. Yes, sir.

[See appendix.]

Senator **DeConcini**. Last year was the first year, Mr. Keeney, of the operation of the Obscenity Enforcement Unit. What is the status of the unit after its first year in existence?

Mr. **Keeney**. Well, it is alive and well. Let me say that, Senator, and they have been very successful in the number and quality of prosecutions. For this fiscal year, we anticipate that between the task forces and the Law Center that we will expend something like $1,151,000.

Senator **DeConcini**. How many cases have they been involved in? Do you know?

Mr. **Keeney**. Yes, sir. I can give you that.

Senator **DeConcini**. If you want to supply that for the record, fine.

Mr. **Keeney**. We will supply that before we leave.

Senator **DeConcini**. Okay.

Mr. **Keeney**. We have it right here, Senator.

Senator **DeConcini**. That is fine. You can give it to the reporter.

Mr. **Keeney**. There has been a dramatic increase in, you know, the child molestation-type cases. There has been an increase in the obscenity prosecutions and we have been able to target in on some of the major distributors, but the dramatic increase is in the child porn cases.

Last year, I think we had something like 247 cases, an increase of maybe 60 percent.

Senator **DeConcini**. As you may know, Mr. Keeney, Senator Thurmond and I introduced S. 2033, the Child Protection and Obscenity Enforcement Act. A hearing has been scheduled for June 8 and it is our hope that committee action will follow.

Have you had a chance to review this legislation at all?

Mr. **Keeney**. I have not personally, but we have had it reviewed in the Criminal Division, Senator.

Senator **DeConcini**. Can you submit a statement as to your assessment of this legislation prior to the June 8 hearing, and whether or not it would be of assistance, in your judgment, in this area?

Mr. **Keeney**. Yes, sir. My reaction would be that it would be of assistance, Senator, but I would like to give a more detailed statement.

Senator **DeConcini**. That would be fine. Thank you.

[See appendix.]

Senator **DeConcini**. The Senator from Iowa, any opening statement or questions?

Senator **Grassley**. Questions. I thank you, Mr. Chairman.

I did not hear your statement, but I did have a chance to look at it last night, so I appreciate very much the opportunity to be with you and to listen to your justification on the authorization.

As you may be aware, I am very much involved in efforts to curb white collar crime, as most members of this committee are. But I have been particularly involved in government procurement fraud, and fraud in defense contracts in particular.

Your statement notes, and I quote, "The prosecution of defense procurement fraud is one of the Attorney General's highest priorities." In order to determine that ranking as to how high of a priority, I would like to have you explain where this priority ranks compared to other priorities identified by the Department as priorities. Is it higher, lower, or in between?

If you could quantify it by how it ranks on a scale of one to ten, I would appreciate it, with ten being the highest priority.

Mr. **Keeney**. Senator, I think I can be more specific than that, if we can locate our figures.

Senator **Grassley**. OK.

Mr. **Keeney**. Fraud is ranked as the number one program priority in the Criminal Division now. As you well know, procurement fraud is one aspect of fraud, and another very important aspect is bank fraud. So fraud is number one. High within that number one are both bank fraud and procurement fraud, so we are talking a very high ranking, Senator.

Senator **Grassley**. Now, there where you mention procurement fraud, are you talking about just DOD or are you talking about governmentwide procurement fraud?

Mr. **Keeney**. Government-wide, but our primary emphasis is procurement fraud, and we have the Procurement Fraud Task Force, Senator, as you know.

Senator **Grassley**. Yes. Well, my quote from your statement speaks specifically about defense procurement fraud.

Mr. **Keeney**. Yes, sir.

Senator **Grassley**. So I would like to have you quantify that for me, if you can, where it ranks among all the government fraud.

Mr. **Keeney**. Well, if you take the resources that are being applied to it, I guess we would have to put bank fraud—within this top category, we would have to put bank fraud first and then procurement fraud, defense procurement fraud, second.

Senator **Grassley**. OK. You requested an increase of three attorneys and three support positions for the investigation and prosecution of defense procurement fraud cases. Now, it is my understanding from the FBI's statement that they requested a similar increase in agents for this priority area.

Could you provide us with statistics—and if you can here today, okay, but if you cannot, then I mean for the record—to show that the present full-time equivalent positions within the division and those that you propose to add now save and will save more taxpayers' money than is spent to support these positions in the area of defense procurement fraud? I am just talking about defense procurement fraud here.

Mr. **Keeney**. I think historically we have demonstrated that these cases, although they drain a lot of resources, we recoup a lot in the way of fines and restitutions, and so forth. But we will give you that projection, Senator.

[See appendix.]

Senator **Grassley**. OK, and I want you to know that I asked the same thing of the FBI when they were here.

Mr. **Keeney**. Yes, sir.

Senator GRASSLEY. On page 7 of your statement, you describe the four major areas of defense contractor abuse upon which the division concentrates—mischarging of costs, defective pricing, substitution of substandard or defective materials in products furnished to the defense establishment and, last, attempts to influence procurement decisions through bribery or extortion.

Could you give us a breakdown on the number of cases successfully prosecuted or settled in each of these areas and the number of work hour requirements to get the cases through trial or settlement?

Mr. KEENEY. I would have to submit that, Senator, but right off the top I can tell you that the numbers are going to be higher in category four, bribery and extortion. We have had, as I think you are aware, a number of cases. The one that comes to mind is Philadelphia where we have had a major program which developed and laid bare a rather corrupt procurement operation.

Senator GRASSLEY. Yes.

Mr. KEENEY. We have had similar situations in various parts of the country.

Senator GRASSLEY. OK. I would appreciate for the record, then, those statistics. Now, I was talking about those that went to trial or settlement. Then, second, I would like to have a breakdown of the number of investigations and work hours spent in each area that led to results other than successful prosecution or settlement.

Mr. KEENEY. The area that I am discussing, category four, has usually resulted in pleas of guilty or guilt after trial. The mischarging cases are the kind that tend more to end up in some sort of a civil disposition, which, again, I know the Senator is well aware of.

[See appendix.]

Senator GRASSLEY. Now, again, I am asking you to kind of tell me if in these four areas whether or not there is a division or a departmental priority among these defense fraud areas, the four that you mentioned.

Mr. KEENEY. Well, you would have to say that bribery and extortion in the process has to be the high priority. I mean, if we have got corrupt government officials at whatever level, we have to give the investigation of their activities the highest priority.

And then the furnishing of substandard or defective materials to the Department of Defense obviously has to have a very high priority.

Senator GRASSLEY. OK. So those two would rank ahead of the other two?

Mr. KEENEY. Well, that would be my—yes, because in the other two you are talking about money. You are charging the Defense Department for matters that more properly should be charged to overhead or in some manner or another charging inappropriately for something.

In the latter two situations, you are dealing with money. Money, in my judgment anyway, Senator, is not as important as non-corrupt people. It is not as important as the Defense Department getting products that are not going to interfere with their function.

I am not minimizing the money aspect. I am just saying that in my judgment, the other things are more important. Everything is relative, and money is very important, but defective material to the Defense Department and bribery of public officials is more important.

Senator **Grassley**. Could you comment on any problems the division is having or that you may foresee coordinating its anti-fraud efforts with the FBI and its mission within the Department's priority areas of law enforcement?

Mr. **Keeney**. It is just a question of resources, Senator. That is the only coordination aspect. If the resources are there, the cooperation is there.

Senator **Grassley**. You do not sense, then, that the FBI might—well, I will go on to my next question. I am sorry. What I started to say I do not want to say.

Would you give the Department's positions, thoughts, or comments on S. 1958, the Regional Fraud Unit Act? It has been introduced by Senator Proxmire and myself, and this does, as the name suggests, establish regional government fraud enforcement units, and our pattern there is the white collar task forces that have operated successfully around the country.

Mr. **Keeney**. Senator, I am not really familiar with the particular legislation, but we will submit comment on it. I have been, you know, familiar with suggestions in the past that we follow the pattern as set by the organized crime strike forces and set up regional white collar crime units.

We have had some experience with that in that we had at one time in the prior administration so-called white collar crime specialists in the various U.S. Attorneys Offices. It was some success, but I am not certain that it was as successful as we had hoped it might be.

I realize that you are probably talking about a larger number of personnel, and I do not know whether on a regional basis it works. Regional-based organizations from a prosecutor's standpoint, with the exception of the organized crime strike force and with the exception of the OCEDEF program, have not been uniformly successful.

There are difficulties when you cross those lines not only between States, but between Federal districts and you have individual U.S. attorneys. The responsibility is not as focused and that creates a problem. But we will comment on your legislation, Senator.

[See appendix.]

Senator **Grassley**. Well, we feel for three reasons—number one is because we have been led to believe, and I guess we believe ourselves, but specifically the Department has felt that their expertise that comes about through the Task Force on White Collar Crime has been successful.

Secondly, then, building on that, it gives us an opportunity to put together some expertise for a special area of problems, and that is government procurement fraud, particularly defense, and then being able to concentrate in a few geographical areas of the country, you know, in three or four States where about half of the procurement defense dollars are spent.

Mr. **Keeney**. Well, as it stands now, as you are suggesting, there is a geographic specialization. United States Attorneys Offices in places like Los Angeles, Dallas, and others of themselves tend to develop an expertise in these areas.

I am not suggesting that, you know, your idea for a more specialized cadre of attorneys and investigators might not be appropriate, but, you know, that does exist.

Senator **Grassley**. On page 6 of your statement, you explain that the division has made attorneys available on an ad hoc basis to help other U.S. attorneys in areas of bank fraud cases, and I note that the southern district of Iowa is one of a number of jurisdictions that is provided such assistance.

Can you explain the type of assistance that the division has provided these jurisdictions in the area of bank fraud prosecutions?

Mr. **Keeney**. Senator, it varies from either totally taking over the case and prosecuting it to second-chairing to providing advice. If I am not mistaken, the one in the southern district of Iowa is an offshoot of the bank fraud investigations in Texas and actually involves, if I have the right case, a target of the Texas task force, a Texas banker.

But it does run across the gamut. We go from giving advice to second-chairing to actually taking over the prosecution. We have done all of that.

Senator **Grassley**. Could you tell us what will happen to the added nine attorneys and five support positions used by the division to investigate and prosecute bank fraud cases if and when bank failures do level off?

Mr. **Keeney**. Well, Senator, there is so much work there now, we could do more now if we had the additional personnel, and I think that even when the bank failures level off that there will still be for a number of years a lot of work to be done.

You know, if we had all the resources in the world, we would have more people right now in Texas and Oklahoma. You know, resources are finite so we have to make adjustments. But a more specific answer to your question is I do not see over the near term the resources that we are requesting not being used on these bank cases.

Senator **Grassley**. Did you have something else you wanted to add?

Mr. **Keeney**. No, sir. I have said it.

Senator **Grassley**. Mr. Chairman, I am going to for the record ask some questions, not the same as what you asked, but on the same general area of obscenity and pornography, and I want the answers in writing.

Senator **DeConcini**. Without objection.

[See appendix.]

Senator **DeConcini**. Without objection, the statement of the Senator from South Carolina, Senator Thurmond, will be in the record, and questions submitted to Mr. Keeney.

[The statement and response to questions of Senator Thurmond follow:]

STATEMENT BY SENATOR STROM THURMOND BEFORE THE SENATE JUDICIARY COMMITTEE, REFERENCE-DEPARTMENT OF JUSTICE AUTHORIZATION-CRIMINAL DIVISION OVERSIGHT HEARING, 226 DIRKSEN SENATE OFFICE BUILDING, TUESDAY, MAY 24, 1988, 10:00 A.M.

MR. CHAIRMAN:

I am pleased to be here today as the Judiciary Committee continues hearings on the Department of Justice authorization request for 1989. I welcome Mr. John Keeney, Acting Assistant Attorney General, who is here to testify this morning as the Committee turns its attention to the Criminal Division.

Regarding its purpose, the Criminal Division is responsible for establishing policy with regard to the enforcement of Federal criminal statutes. This responsibility covers such areas as organized crime, bank fraud, drugs and pornography. In the past, Congress has taken a "get tough on crime" attitude which has resulted in the passage of major legislation such as the Comprehensive Crime Control Act of 1984, the Child Protection Act of 1984 and the Omnibus Drug Bill of 1986. These laws were enacted to give prosecutors the necessary tools to effectively attack criminal activity in these very important areas. The Criminal Division provides valuable assistance to U. S. Attorneys around the country; therefore, Mr. Keeney is in a position to inform us as to what problems, if any, prosecutors in the field have encountered in enforcing the current laws. I welcome any suggestions he may offer as to ways in which Congress can act to pass new laws to aid in the tough fight against the criminal element.

Last year, the Attorney General established the National Obscenity Enforcement Unit within the Criminal Division. I have long been concerned with regard to pornography and the effects that it has on our society. Of specific concern to me, is the effect that pornography has on children who are used in the production as well as those who are exposed to such material. Earlier this year, my good friend from Arizona, Senator DeConcini and I introduced S. 2033, the Child Protection and Obscenity Enforcement Act of 1988 which would strengthen current child pornography and obscenity laws. This is important legislation which currently has 36 cosponsors. The Judiciary Committee has scheduled a hearing on my bill next month. I am pleased that this hearing has been scheduled and believe this legislation must be adopted this year. Additionally, I am interested in the Department's views on the best course to get this legislation enacted. As well, I am interested in the achievements of the Pornography Unit since its inception.

Thank you for coming today and I look forward to hearing your testimony.

END

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 20, 1988

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to a series of questions posed by Senator Thurmond of the Committee relating to the recent hearing on the Criminal Division's budget request for fiscal year 1989.

I would be pleased to provide any further information in which the Committee may be interested.

Sincerely,

Thomas M. Boyd
Acting Assistant Attorney General

Enclosures

Question: In my opening statement today, I indicated that I am interested in the achievements of the National Obscenity Enforcement Unit. Would you briefly outline the major achievements of this Unit.

Answer: The dramatic metamorphosis in federal law enforcement's attitude and action toward obscenity, organized crime, child pornography and child exploitation is most accurately portrayed in the increase in investigations and indictments from Fiscal Year (FY) 1986 to FY 1987. Child pornography prosecutions have increased 800% in a single fiscal year while federal obscenity prosecutions show almost an 80% increase in the same time period. Investigations have likewise dramatically increased, as illustrated by the number of United States Attorneys actively pursuing investigations: approximately 24 in FY 1986 prosecuting child pornography to over 80 in FY 1987, and less than six prosecuting obscenity in FY 1986 to over 45 in FY 1987.

As you know, the National Obscenity Enforcement Unit (NOEU) is the centerpiece of the Department of Justice's new initiative against obscenity and child exploitation. Prosecution of these crimes has been designated as two of the Department of Justice's top criminal justice priorities.

A summary of the first-year achievements of NOEU, with its two components, the Federal Obscenity Task Force and the Obscenity Law Center, is attached. For the first time, obscenity and child pornography have been made top law enforcement priorities and a comprehensive national strategy has been devised to reach our three ambitious, yet attainable, long-term goals:

(1) eradicate child pornography and thereby dramatically reduce child molestation;

(2) eliminate illegal adult obscenity from the open market; and

(3) dismantle the criminal organizations which distribute materials.

Our national long-term strategy to attain these goals is fivefold:

(1) to utilize joint federal/state task force efforts throughout the country;

(2) to employ innovative approaches such as RICO in obscenity prosecutions and reverse sting/undercover investigations in child sexual exploitation;

(3) to target, on a nationwide basis, major distributors, suppliers and producers of obscenity and major offenders of child pornography trafficking within the pedophile network;

(4) to continue intensive federal/state training of prosecutors and investigators; and

(5) to expand the use of the Obscenity Law Center within NOEU as a national clearinghouse legal resource center and public information bureau.

To further highlight recent achievements, I have attached two of our most recent bimonthly Obscenity Enforcement Reporters, which are sent to approximately 10,000 interested prosecutors and law enforcement agencies -- local, state and federal -- throughout the nation. In addition, the Government Printing Office (GPO) maintains a growing list of private sector paid subscribers to this newsletter. At present, GPO requires 1000 copies of each issue to meet this need.

Question: How would S. 2033, the Child Protection and Obscenity Enforcement Act, which I introduced, improve current law:

Answer: As President Reagan stated upon transmitting to Capitol Hill S. 2033, The Child Protection and Obscenity Enforcement Act, the purpose of the legislation is two-fold: "First, to update the law to take into account technologies newly utilized by the pornography industry; Second, to remove the loopholes and weaknesses in existing federal law which have given criminals in this area the upper hand for far too long." Attached is a document titled Analysis of the Child Protection and Obscenity Enforcement Act which indicates, on a section by section basis, specifically how each provision of the Act would improve current law.

Question: In your written testimony, you indicated that the number of obscenity and child pornography cases that are being brought has increased over the years. What is the success rate in securing convictions in these cases?

Answer: In Operation Borderline and Project Looking Glass, the two main child pornography prosecution projects in which the Department of Justice was involved within the last eight months, there were only two acquittals in over 300 cases. There were no acquittals in any of the 13 obscenity prosecutions during the last fiscal year.

Question: What specific efforts have been taken to encourage U.S. Attorneys to prosecute obscenity and child pornography cases?

Answer: Many specific efforts have been taken to encourage United States Attorneys to prosecute obscenity and child pornography cases. First and foremost, the creation of the National Obscenity Enforcement Unit, within the Criminal Division, was aimed at providing expertise, direction, training and legal resources to United States Attorneys in these areas to encourage investigations and promote successful prosecutions. To that end, and in light of the fact that obscenity and child pornography cases and trials are often lengthy and complex, NOEU was created in part to provide senior prosecutors, possessing an expertise in obscenity, organized crime or child pornography, to serve as lead counsel or co-counsel in significant cases.

Second, due to the lack of federal and state activity in these areas over the past 15 years, a serious vacuum of knowledge and experience existed among prosecutors and investigators alike at every level of government. Extensive training by NOEU through national conferences and statewide and regional Law Enforcement Coordinating Committee (LECC) seminars were held to compensate for that inadequacy and remedy the situation on all levels of law enforcement -- local, state and federal.

Third, a national task force was created by requiring each United States Attorney to designate at least one Assistant United States Attorney to be trained by the NOEU and to serve as the local obscenity/child pornography specialist handling these cases in their respective district. The national task force thus created - not unlike the nationwide Drug Task Force - is spearheaded and coordinated by senior NOEU prosecutors who handle the most complex cases and coordinate prosecutions throughout the nation in the other cases with United States Attorney Offices.

Fourth, a national Obscenity/Child Exploitation Working Group (OWG) was created in Washington, D.C. to encourage and coordinate investigations by the FBI, Customs, Postal and IRS in these areas. United States Attorneys cannot prosecute unless federal investigative agencies make it a priority to thoroughly investigate obscenity and child exploitation cases. To that end, the OWG targeted the most significant producers, suppliers and distributors of obscenity as well as significant individuals within the child pornography/molester network upon which to focus federal resources. The Department of Justice has also received commitments from all the federal investigative agencies to designate and train field agents throughout the nation, in order to produce an investigative team functioning in parallel to the Assistant United States Attorneys on the national task force.

Fifth, local and federal/state task forces, which naturally arise from statewide training conferences, were formed to deal with local obscenity and child exploitation problems. The local task force coordinator in each case is the Assistant United States Attorney who serves on the national task force. Joint cooperation, delegation of duties and the use of asset forfeiture have made these federal/state task forces an overnight success in most instances.

Sixth, a national clearinghouse and legal resource center was created (the Obscenity Law Center within the NOEU) to assist local, state and federal prosecutors so as to obviate "reinventing the wheel" in pre-trial and trial preparation, appellate issues, and legislative questions.

Seventh, the Attorney General has personally directed United States Attorneys to prosecute, hold training seminars and treat obscenity and child pornography as top criminal justice priorities within the United States

Attorneys' Offices. In fact, top Department of Justice officials, including the Attorney General, the Deputy Attorney General and the Associate Attorney General have spoken at LECC training seminars both in Washington, D.C. and in the field.

Eighth, providing accurate information to United States Attorneys and Assistant United States Attorneys on the gravity of the problem as highlighted by the Pornography Commission Report, law enforcement studies and scientific research. To that end, we publish a bimonthly newsletter, compile talking points memoranda on the effects of pornography, and publish numerous articles on these issues. Topics include Dial-A-Porn, Beyond the Commission (an enumeration of the Federal Government's responses to the 92 recommendations of the Pornography Commission), Myths and Misconceptions Regarding Pornography, and Local Regulation of Sexually-Oriented Businesses. We also have provided accurate statistics, updates on Federal Government activity and various types of information to United States Attorneys' Offices to enable them to educate citizens and respond appropriately to citizen complaints and inquiries.

Finally, the successful employment of new approaches to the investigation and prosecution in these types of cases has proven a great encouragement to the United States Attorneys. These approaches have begun to have a significant impact on organized crime's involvement in the obscenity industry, as well as in the underground pedophile network. Obscenity-based RICO, national targeting, multiple-district prosecutions, undercover child pornography investigations, reverse stings against the child pornographers, international cooperative investigations, "pedophile flips" (turning child pornographers to work cases against their "brethren") and pretrial motions in limine on key legal issues have all convinced United States Attorneys that prosecutions can be successful and have significant impact if done correctly and in a coordinated fashion.

Question: In 1984, Congress passed the Comprehensive Crime Control Act. This major legislation was the result of the bipartisan efforts of the members of this Committee. One of the provisions of this Act was the Sentencing Reform Act which established the Sentencing Commission to formulate guidelines to be used by Federal judges in the sentencing process. The newly promulgated sentencing guidelines were effective on November 1, 1988. Since that time, numerous federal cases challenging the constitutionality of the Sentencing Commission have been filed and ruled on by the lower courts. What efforts has the Department of Justice undertaken to seek expedited review by the Supreme Court of one of the cases so that this issue may be resolved?

Answer: The Department of Justice agrees that, because of the confusion in the federal criminal justice system created by the present dispute among the district courts as to the constitutionality of the sentencing guidelines, expedited review by the Supreme Court is appropriate. Accordingly, earlier this month the government filed a petition for a writ of certiorari before judgment in the court of appeals in United States v. Mistretta, No. 87-1904. The petition, a copy of which is attached, seeks to have the Supreme Court invoke its power, exercised only in rare cases, to review a decision before the court of appeals has heard the case. It is the government's expectation that the petition will be acted upon before the end of the current Term and that, if granted, the case will be briefed and argued early in the Court's next Term beginning in October, 1988.

Question: In the Districts in which Federal judges have ruled the guidelines unconstitutional, how are the U.S. Attorneys proceeding with regard to cases to which the guidelines apply?

Answer: It is Department of Justice policy, in courts in which the guidelines have been found invalid, nevertheless to ask the courts to sentence under the guidelines (in effect to stay their ruling and treat the guidelines as valid pending appeal). Some district courts, e.g. those in Maryland, have agreed to follow this procedure. Other district courts have declined to stay their holdings and are imposing sentences without regard to the guidelines.

Question: As you know, last year the Supreme Court ruled in McNally v. United States that the mail fraud statute may not be used to prosecute public corruption cases in which there has been no economic harm.

a. What effect has this decision had on prosecution of these cases?

b. Is legislation necessary to allow for prosecution of these cases?

Answer: a. The McNally decision has unfortunately had a significantly adverse effect on the Department's ability to prosecute public corruption cases. While many instances of public corruption can still be reached under the mail and wire fraud statutes even after McNally, a substantial number in which no property loss can be shown are no longer prosecutable. Moreover, a number of prior cases prosecuted under the intangible rights theory rejected in McNally have been overturned, and many cannot be retried.

b. The Department of Justice firmly believes that a legislative solution to the problem created by McNally is necessary. Recently, the Department of Justice formally transmitted to Congress a legislative proposal to accomplish this goal entitled the Anti-Public Corruption Act of 1988. Acting Assistant Attorney General Keeney testified in support of this proposal before the House Subcommittee on Criminal Justice on May 12, 1988. A copy of this Statement and of our proposal are attached. It is our hope that Congress will act promptly to address this important issue

THE ANTI-DRUG ABUSE ACT OF 1986

Question: In 1986, The Congress enacted the Omnibus Drug Bill. Included in this bill were stiffer criminal penalties for those who traffic in drugs. What effect have these provisions had on drug prosecutions throughout the country? Should the penalties be even stiffer?

Answer: The Anti-Drug Abuse Act of 1986 authorized stiffer criminal penalties for drug traffickers which included, for the first time, mandatory minimum terms of imprisonment for those who traffic in major quantities of the most commonly abused controlled substances (e.g., cocaine, crack, LSD, PCP, marijuana). These stiffer penalties have had several salutary effects. For example, the new penalties guarantee that major drug traffickers, who choose not to cooperate, receive substantial minimum jail terms which must be served in their entirety with credit given only for good behavior while incarcerated. The multi-tiered penalty scheme also functions to ensure that the severity of the penalty is generally commensurate with the relative severity of the offense, a situation which did not always pertain under prior law. Finally, the new penalty scheme has increased the willingness of drug arrestees to cooperate in the investigation and prosecution of their co-conspirators and/or suppliers in order to obtain the benefit of the so-called "work-off provision" (18 U.S.C. § 3433(e)), with a corresponding increase in the number of drug arrests and convictions.

Federal prosecutors are generally satisfied with the severity of the new criminal penalties. The issue of whether even stiffer penalties are needed will be more easily resolved after we have had more experience with the impact of the new sentencing guidelines on sentences actually imposed in drug cases.

Question: In your testimony, you stated that the Criminal Division as a part of the Prosecution Committee of the National Drug Policy Board has developed a National Narcotics Prosecution Strategy. Could you briefly outline the key elements of this strategy?

Answer: The principal goals of the National Narcotics Prosecution Strategy are as follows:

Strategy 1: Priority Targets

Extend efforts to reduce the supply of illegal drugs in the United States to the maximum extent possible by increased pro-active targeting of the major traffickers responsible for narcotics importation and distribution in this country.

Strategy 2: Assistance to State and Local Narcotics Prosecution

Continue to work with state and local narcotics enforcement authorities and expend efforts to assist them in narcotics prosecution

Strategy 3: Local and Regional Narcotics Threats

Attack other significant local and regional narcotics threats as identified by federal, state and local law enforcement authorities and maintain a federal enforcement presence in every district.

A primary purpose of this national strategy is to ensure that the limited prosecution resources of the federal government, as well as the unique capabilities of federal law enforcement, are generally directed toward those significant national and international targets where successful prosecution can have the most lasting impact on the national drug problem (Strategy 1). At the same time, the strategy is designed to help state and local law enforcement authorities maintain proper staffing and training to maximize the impact of drug enforcement efforts within their jurisdictions (Strategy 2). In addition, the national strategy seeks to maintain a federal narcotics enforcement presence in each district to avoid the perception or reality of gaps in law enforcement (Strategy 3).

__Question__: What effect has the National Drug Policy Board had with regard to the coordination of federal drug efforts?

__Answer__: Created by Executive Order in March 1987, the Cabinet-level National Drug Policy Board (NDPB) serves as the nation's highest-level forum for the exchange of information, discussion of ideas and resolution of differences between departments and agencies involved in the Federal drug control program.

More specifically, the Board--which met 16 times between October 1987 and May 1988--is charged with (1) developing Federal drug law enforcement and abuse prevention/treatment strategies; (2) ensuring these strategies are implemented in a coordinated fashion; and (3) resolving interagency disputes when they arise.

The success of the Board in carrying out its responsibilities was recognized by the General Accounting Office in its February 1988 report on the NDPB, "the Policy Board's efforts to facilitate coordination have been worthwhile and responsive to the requirements of the law establishing" the NDPB.

As part of this effort to improve Federal drug control program coordination and effectiveness, the NDPB issued a directive in May 1987 establishing nine lead agencies[1], each charged with "developing specific strategy and implementation plans" for its area of responsibility.

In August, Chairman Meese met with Lead Agency Committee[2] Chairpersons and tasked each with developing a document detailing the policies, strategies, programs, objectives and necessary resources for his or her area of responsibility.

Completed in the early Fall, Committee "strategy planning documents" were thoroughly reviewed at the Board, Coordinating Group and staff levels between October 1987 and January 1988, when they were approved in principle by the NDPB.

In early February 1988, Lead Agency Committees converted their planning documents into FY88/89 implementation plans consistent with the resource levels provided in the budgets for fiscal years 1988 and 1989.

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[1] **Supply** (5): Intelligence (DEA/Lawn), International (DOState/Wrobleski), Interdiction (USCS/von Raab), Investigations (DEA/Lawn), Prosecutions (DOJ/Whitley). **Demand** (4): Prevention Education (DOEd/Walters), High Risk Youth (DOJ/Spiers), Mainstream Adults (HHS/Windom), Treatment (NIDA/Schuster).

[2] Each of the nine Committees, created in June/July 1987, consist of those agencies with jurisdiction in the Committee's area of responsibility.

In early March, NDPB Lead Agency Committee strategy implementation plans were provided to over 150 members of the House and Senate.

On July 1, Committees will provide the first bi-annual report to the Board on the status of the implementation of their strategies.

Question: If legislation is enacted that would provide the death penalty for murder committed in the course of drug trafficking, what effect, if any, would it have on reducing drug related violence?

Answer: We have consistently supported reinstitution of capital punishment in the federal criminal justice system because we believe it has a deterrent effect. Moreover, we believe that only the death penalty is truly proportionate punishment for particularly heinous crimes. I should note that, while we support the narrow death penalty for drug-related killings, we strongly prefer comprehensive capital punishment legislation such as proposed by the President in the Criminal Justice Reform Act (S. 1970; H.R. 3777). In addition to avoiding the anomaly of having the death penalty available for drug-related killings but not Presidential assassination, the comprehensive approach would also address murders by persons serving life terms in federal prisons. We have in recent years had several federal correctional officers murdered by prisoners serving life terms and have only been able to have a second life term imposed. In short, there is no meaningful deterrent to the murder of federal correctional officers by persons serving life terms. Obviously, this situation is highly detrimental to the safety and morale of our correctional officers.

__Question__: Some have suggested that the __Miranda__ v. __Arizona__ decision should be overturned. Would a "voluntariness" standard strike an appropriate balance between the rights of the accused and law enforcement efforts to determine the truth?

__Answer__: Following the __Miranda__ decision in 1966, Congress in 1968 enacted a federal statute that was designed to reinstate a voluntariness standard for the admissibility of confessions. 18 U.S.C. 3501. The Department of Justice believes that a voluntariness standard does strike an appropriate policy balance between the rights of the accused and society's interest in finding the truth in criminal trials, and that this standard is consistent with constitutional guarantees. The Department's Office of Legal Policy recently published a Report to the Attorney General supporting the overturning of __Miranda__ and a return to the voluntariness standard found in 18 U.S.C. 3501. A copy of this Report is enclosed for your information.

Senator DeConcini. Based on attendance here, I yield to the Senator from Pennsylvania for any questions he has. I would like to limit the first round of questions to 10 minutes. If the Senator wants more, he can have time later.

Senator Specter. All right, thank you very much, Mr. Chairman.

Mr. Keeney, how is the Department functioning without an Assistant Attorney General?

Mr. Keeney. Well, I think we are doing pretty well, Senator Specter. An Assistant Attorney General has a function. He sets policy, he sets us on new paths. The policies have been set by Mr. Weld. We are on the new paths, and we have got a very stable workforce in the Criminal Division.

Senator Specter. The Attorney General is about to submit a new name and I have been asked preliminarily if it is agreeable so far as I am concerned to have the new man function until he is confirmed.

I take it that the division is working well enough so that we do not need to let him function as acting until he is confirmed.

Mr. Keeney. No, I do not say that at all, Senator. What I was trying to explain—incidentally, I think very highly of Ed Dennis. He has done an outstanding job in your home——

Senator Specter. Why do you mention that name?

Mr. Keeney. Because he is the name that is going to be appointed.

Senator Specter. Are you speaking for the President?

Mr. Keeney. I am speaking for the——

Senator Specter. The Attorney General?

Mr. Keeney. The Attorney General.

Senator Specter. Or for the New York Times?

Mr. Keeney. I am speaking for the Attorney General and I am speaking for Mr. Dennis, who——

Senator Specter. Is that official?

Mr. Keeney. It is official. While it is supposed to be official and the nomination was supposed to be yesterday, today it is supposed to be today, so it is imminent. The name is coming up.

Senator Specter. How is the Department functioning without a Deputy Attorney General?

Mr. Keeney. Well, Senator, may I go back and just talk a little bit about the Criminal Division and I will get to your question?

Senator Specter. Do not take too long.

Mr. Keeney. All right.

Senator Specter. I have got 8 minutes left.

Mr. Keeney. You have asked how the Criminal Division is functioning. I want to tell you that there are 29 senior executive management positions in the Criminal Division; 26 of those are career.

You as a prosecutor know that the—I am going back to your original question—you as a prosecutor know that day in and day out there are things that the professionals do and they do well, and the leadership at the top has no direct impact on the day-to-day operations. It has the impact on the policy——

Senator Specter. Leadership at the top has no direct impact on the day-to-day operations?

Mr. Keeney. Day-to-day operations, yes, sir.

Senator Specter. Mr. Keeney, when I was the district attorney, the day-to-day operations came to me constantly. Now, I know that Senator DeConcini was a district attorney and had it so well organized that nobody had to go to him.

But when I was the head of the prosecuting division, I had to make decisions all the time about when to ask for the death penalty and when to press a judge about sentencing and when to extradite witnesses.

Are you telling me that it really does not make a whole lot of difference whether there is a Deputy Attorney General in place or an Assistant Attorney General in charge of the division?

Mr. Keeney. No, sir. I am saying that over the short term where there are not serious policy decisions to be made or new directions to be taken that the career service is such that it carries on effectively on a day-to-day basis.

Senator Specter. How about the war on drugs, Mr. Keeney? Is there not a need for some new policies and some new programs and some new directions to deal with that major issue confronting this country?

Mr. Keeney. Yes, and those are being——

Senator Specter. The policies of yesterday and today certainly are not sufficient, are they?

Mr. Keeney. Well, we are successful in making prosecutions. We are not successful in solving the problem. I agree with that, but the——

Senator Specter. Do we not need some new policies and some new directions?

Mr. Keeney. Well, presumably we will have those. We will have Mr. Keating on board, and he has been very involved in the Drug Policy Board and is in a unique position to take over to represent the Department.

Senator Specter. Well, the Assistant Attorney General for the Criminal Division will have a significant role, will he not?

Mr. Keeney. Yes, sir.

Senator Specter. And the Deputy Attorney General has a significant role?

Mr. Keeney. Yes, sir.

Senator Specter. Well, there is a lot of concern here, Mr. Keeney, and I do not really want to put the questions to you about how the Department is running because it is really not your role to answer them.

But we are very anxious to see an Assistant Attorney General in charge of the Criminal Division, notwithstanding the splendid way it is operating. And I have great respect for you as a career prosecutor.

Mr. Keeney. Thank you, sir.

Senator Specter. I really do, and we were together as recently as yesterday afternoon at Judge Michel's investature. But I have a lot of concern about how the Department is running, and I intend to give my consent, frankly, whatever that is worth, to letting the person who is named go ahead and act as it, and also as the deputy, because of the need for people there.

But there are a tremendous number of concerns I have, and I am going to summarize a series of questions for you because I have only got 5 minutes left on issues which I have brought before your division in the past and have not been able to get an answer when there was an Assistant Attorney General in charge of the division.

The career criminal prosecutions, I think, are a matter of enormous importance in this country because they bring the Federal Government into the fight on street crime, and I have a specific interest because I sponsored the career criminal bill in 1984 and the amendments in 1986, and it is a major tool against drug trafficking.

I wrote to the Attorney General on April 10th of 1987, more than a year ago, and got a brief reply from Assistant Attorney General John Bolton on June 9, which is almost a year ago, promising some specifics on how the bill was functioning.

When Mr. Weld was in on February 5th of 1987, we covered a lot of this ground and I asked him for an evaluation as to how the Department was functioning, and he said to me at page 60 of the record, "I will get you those statistics right away." I have not gotten them yet.

It is very hard to evaluate the request for funding when we have those major issues which are outstanding. The Attorney General appeared before this committee more than a year ago and the issue came up on the drug czar question, and the Attorney General testified from the chair where you are sitting now that we did not need a drug czar because he was able to do the job himself. And I asked the question whether the drug czar job really was not a 100 percent-responsibility at times, and the Attorney General said it was.

I would like to see an evaluation as to how well we are doing on the prosecution of drug cases. We know the celebrated cases; we know of the conviction last weekend. But I would like to see a comparison of the statistics for, say, 1985, 1986, 1987 and 1988, or perhaps just 1986, 1987 and 1988, as to how many drug prosecutions were initiated in each year, how many were prosecuted through to conviction and what the sentencing is, so we have some evaluation as to how well we are doing on the prosecution of major drug pushers and importers.

The Senate a few weeks ago put up $2.6 billion for the war on drugs, the so-called DeConcini bill, and we are trying to figure out now how to allocate resources. And I have an instinct that we ought to be putting more on the demand side, on education and rehabilitation.

But I do not have a good idea, hardly any at all, as to how successful we are on the prosecution side, on the interdiction, the battle against importation and selling. And I would ask you these questions, except I know that not only do we not have the time now, but you could not possibly have those answers.

But I would like to see those answers before we have the confirmation proceeding on the permanent Assistant Attorney General.

Mr. Keeney. Yes, sir.

Senator Specter. I would also like to see the answers on the prison situation where we have the new sentencing guidelines, and they may or may not be declared constitutional or unconstitutional, but that is a major issue which we are facing now on the appropriations process. It seems to me we are badly, badly underfunded on prisons, an issue we have very sorely neglected.

So may I make the request for those three subjects between now and the time that the permanent Assistant Attorney General comes in?

Mr. KEENEY. Yes, sir, but two of them are really out of our area, prisons and drug czar, but we will get the answers for you.

Senator, can I briefly address your career criminal——

Senator SPECTER. Well, Mr. Keeney, I do not think they are out of your area. The prisons are administered by the Justice Department. I understand this is——

Mr. KEENEY. I am talking about the Criminal Division, sir.

Senator SPECTER. Excuse me. I understand this is the Criminal Division, but the Criminal Division cannot function without having sufficient prisons.

Mr. KEENEY. Right.

Senator SPECTER. When I was district attorney in Philadelphia, I was not in charge of the prisons, but I could not get the judges to sentence anybody unless there was prison space available. So I made it my business to start the battle to get prisons expanded in Pennsylvania. The prosecutor's role in the Criminal Division does not stop with what goes on in the courtroom.

And drug czar, while not specifically within the Criminal Division, is also directly related to the prosecution of drug cases. These are very important answers for this committee on our oversight function and on our funding function.

You had a comment you wanted to make? I have one question, Mr. Chairman.

Mr. KEENEY. I was just going to commend you on your career criminal—maybe we had difficulty getting the figures together, but across my desk on a daily basis is the utilization of the career criminal statute where we have situations where part of the proof with respect to the career criminal will involve proof that the individual had been convicted of a State crime or even a prior Federal crime and they are accumulated for the purposes of getting an enhanced sentence. I would say it is being used very heavily, Senator.

Senator SPECTER. I do not want that generalization, Mr. Keeney. I want to know the specifics. I want to know if it has been used for leveraging in State prosecutions, as it was intended. I want to know the details.

Mr. KEENEY. Yes, sir.

Senator SPECTER. They may have crossed your desk. They have not crossed mine.

I have one question, if I may ask one question on an amendment which I added to the budget bill which passed allocating $100 million this year as part of a 5-year program to construct 16,000 cells to be dedicated to convicted habitual offenders out of State prisons.

As a longtime professional, Mr. Keeney, I know you are aware of the habitual offender statutes in the various States where people get life sentences if they are habitual offenders. Some 40 States have had those laws, depending on three or four convictions.

They have fallen into disuse for a wide variety of reasons. I could not get the judges in Philadelphia to use them. I have a sense that if we had jail space provided by the Federal Government where we are dealing with habitual criminals, many in the drug field, certainly all involved in interstate commerce, and said to the State prosecutors and State judges those habitual offenders will be housed in Federal prisons to help you on your overcrowding situation—a unique category of specialized, hardened criminals who do deal in interstate commerce—that it would be a very effective inducement to get States to use the habitual offender statute.

I would be interested in your judgment as to whether you think it would be a good idea to try to move forward on that line for 16,000 cells on a trial basis to try to get States to use their habitual offender statutes.

Mr. KEENEY. Senator, I like the concept. I think it is a good idea. The practicalities from a budget standpoint, I just do not know.

Senator SPECTER. Well, that is fair enough. You think it has some utility from a prosecution point of view and an enforcement point of view if we can find the money.

Mr. KEENEY. It would encourage, I think, more State prosecutions seeking heavier penalties.

Senator SPECTER. Thank you, Mr. Keeney. Thank you, Mr. Chairman.

Senator DECONCINI. The Senator from Illinois.

Senator SIMON. Thank you, Mr. Chairman.

In connection with the comments of Senator Specter, I would like to put into the record the Christian Science article "Tumult at Justice Takes Its Toll." The subhead is "Career bureaucrats steer daily tasks, but new probes, initiatives left waiting." I would like to enter that in the record, Mr. Chairman.

Senator DECONCINI. Without objection.

[The information follows:]

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4 APR 1988

Tumult at Justice takes its toll

Career bureaucrats steer daily tasks, but new probes, initiatives left waiting

By Barbara Bradley
Staff writer of The Christian Science Monitor

Washington

Law enforcement has become a casualty of turmoil at the Justice Department.

On a day-to-day basis, the bureaucracy is marching on seemingly unaffected by the resignations of top officials and questions over whether the attorney general should remain in office.

But when it comes to launching new investigations and initiatives, getting through legislation for law enforcement, and filling judgeships, the cogs of Justice have slowed considerably, according to current and former Justice Department employees as well as congressional aides dealing with the department.

"In terms of the department as a force in policymaking and with the Hill and its grander relations with the US attorneys, for example, it [the turmoil] has had an effect," says one Justice Department official who requested anonymity. "There have been a number of initiatives which have

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gotten stalled by a combination of factors, among them, the attorney general's preoccupation with other things."

On one level, the department has been insulated over the last few months. "One of the great strengths of the department is that it's filled with exceptional career people who do most of the day-to-day work," says Associate Attorney General Stephen Trott, who is leaving for a federal judgeship later this month.

And for now at least, the front-page saga of the department has veered away from a dramatic climax. On Friday, James McKay, the independent counsel who is investigating Attorney General Edwin Meese III, said there is no evidence "developed to date" to criminally indict Meese for his role in the Iraqi pipeline project and financial holdings in the regional telephone companies, though investigation continues.

If Mr. McKay recommends no indictments, however, the Justice Department will then pick up its internal investigation into Meese's financial dealings, which have been on hold during McKay's investigation.

Moreover, the attorney general seems to have headed off a new spate of resignations – among them, that of Solicitor General Charles Fried – that were reportedly in the works after the deputy attorney general and chief of the criminal division quit last week. This week Mr. Meese is expected to appoint Judge Arlin Adams of Philadelphia to be deputy attorney general, the No. 2 spot; Francis Keating II, a Treasury Department official, to be associate attorney general (No. 3); and James Knapp, who has worked in the Justice Department's tax and criminal divisions, to head the criminal division (No. 6).

AP

AP

The statement by special prosecutor James McKay (left) that he has no evidence so far to indict Edwin Meese (right) has taken some pressure off the attorney general to resign

But these steps are unlikely to end to the tumult, says Philip Heymann, who headed the Justice Department's criminal division during the Carter administration. "The series of investigations and ethical problems Mr. Meese has [encountered] will continue to be time-consuming for him and demoralizing for the department," he says.

Nor can relief from McKay and new appointments undo the damage already inflicted on law enforcement, says one Justice Department official. By way of example, this official cites proposed legislation that would help prosecutors go after corrupt public officials. In June the Supreme Court invalidated a major legal tool used by prosecutors. The ruling was "devastating" to prosecutors, this official says, and law enforcement agencies – US attorneys, state district attorneys, the National Association of Attorneys General – quickly pushed for remedial legislation. The House and Senate introduced bills shortly after.

But the Justice Department delayed coming out with a position, in large part, this attorney and others say, because of bureaucratic wrangling that has gotten out of control over the last year. "The decision for what is right for law enforcement could not be clearer, and it has been stalled," the official notes. The department reportedly has a position paper prepared, but it is still "in limbo," a Justice Department spokesman says.

One Justice Department watcher says vacancies in the upper echelons of Justice make it hard for people below the division-head level to launch major investigations, approve major settlements, weigh in on legislative approaches – in short, to start any new initiatives – without approval of senior people.

New appointments this week will only help at the margin, says former Criminal Division chief Heymann, because it will take some time for the appointees "to get on top of things."

Moreover, he says, new bodies will not improve management and morale problems that reportedly spurred Deputy Attorney General Arnold Burns and Criminal Division chief William Weld to quit last week. "They resigned because the situation was such that the Justice Department was not functioning."

And while the new appointees are expected to start their jobs immediately, they still must be confirmed by the Senate.

That could stymie the administration in another key judicial goal, says Walter Dellinger, a professor at Duke Law School. "The administration, by virtue of those resignations, may well have lost the opportunity to name some number of federal judges because it's likely the [Senate] Judiciary Committee will give precedence to confirmation hearings on the nominees for these position," he says. There are 42 judgeships open.

In general, relations with the Democratically controlled Congress have soured dramatically, congressional aides say, although they seem to have improved somewhat with recent personnel changes at the department. "I have never seen a department which institutionally has gone so low," says one aide who works on judicial matters.

Sometimes, another congressional staff member says, that can result in muscle-flexing that irritates the Hill. On Thursday, for example, the Senate was set to approve a popular bill with bipartisan support designed to protect children from being abducted by their estranged parents, to other countries. The House had already approved a similar bill. At the 11th hour, the Justice Department reportedly asked a Republican senator to hold the legislation.

The department had earlier voiced concerns over the legislation. But since the legislation was considered a shoe-in, this aide says, "We figured Justice is just trying to prove they can still take a stand, that they're still a player. Or else," he says, "they're in such chaos they can't decide which way to go."

Senator SIMON. In that connection, in June of 1987 the Supreme Court ruled in the *McNally* case that the mail fraud statute could not be used to prosecute cases of public corruption.

Senator Specter and Congressman Conyers have introduced legislation, but this could have a greater impact in my State than any other State because of the *Greylord* cases, and there is a cloud of uncertainty there.

It is imperative that we move, and the Supreme Court decision makes clear that we can move legislatively to correct this, but I do not see anything happening at Justice to see that we take care of this.

Mr. KEENEY. Senator, we submitted a proposed *McNally* fix 2 weeks ago and I have appeared personally before Congressman Conyers and we are having a dialogue right at the present with Chairman Conyers.

Senator SIMON. I was not aware of that.

Mr. KEENEY. Yes. What we submitted is a broadly-based anticorruption statute. It is geared to corruption. It does not include private crime under the mail fraud statute, but it picks up what the Supreme Court found lacking, the so-called intangible rights, the right of the citizenry to the honest and uncorrupted services of its public officials.

It not only picks it up, but the bill as we presented it would pick up more clearly fraud, deprivation of the honest services of public officials. It would also pick up various election law violations which have been prosecuted in the past under the mail fraud statute.

But in addition to that, a most important part from our standpoint is that the jurisdictional predicates would be expanded. It would not only be the use of interstate wires or the use of the Federal mails, but the Federal Government would have jurisdiction if an instrumentality of interstate commerce was used, even though the matter did not go in interstate commerce.

In other words, you had something delivered through an interstate commerce instrumentality, communication, say, over a phone system that was an interstate phone system, although it did not go interstate. In other words, we would have jurisdiction in almost any corruption situation.

Senator SIMON. And is that going to be vigorously pursued?

Mr. KEENEY. Yes, sir. We are pursuing it right now. We have already testified. When I testified before Chairman Conyers 2 weeks ago on the *McNally* fix, we had pushed hard to get through OMB what we called the proposal 18 U.S.C. 225 so that we could present it at that time. Unfortunately, we did not get it up to him until the day of the hearing, but it is before the Congress now.

Senator SIMON. Well, it took almost a year from the *McNally* case to getting this. Was the hang-up in OMB?

Mr. KEENEY. The hang-up was with respect to the scope of the fix. If we went for a simple *McNally* fix, we would have just redefined fraud in 1341, the mail fraud statute, and 1343, the wire fraud statute. We would redefine fraud to include intangible rights and the intangible right of the citizenry to have its affairs conducted honestly.

It was decided after some discussion that we would go for a broader jurisdictional basis for prosecution and more clearly pick up election fraud violations.

Senator **Simon**. I understand its status. Has a bill been introduced now in the House?

Mr. **Keeney**. We sent it to the Speaker and to the Vice President 2 weeks ago. Whether there is a sponsor, I am not sure. I am not aware of a sponsor at this point.

Senator **Simon**. Okay.

Mr **Keeney**. But we have been pressing it in the House.

Senator **Simon**. I should get in touch with the Vice President to check this out here right now.

Mr. **Keeney**. I would hope you would be interested enough to sponsor it, Senator Simon.

Senator **Simon**. All right. Well, we will.

Mr. **Keeney**. In your home State, for instance, a corrupt judge walked off free because of *McNally*.

Senator **Simon**. Well, that is why it is really important that we move vigorously and quickly.

Mr. **Keeney**. Yes.

Senator **Simon**. We face the problem of the clock now in this legislative session. I hope we can move quickly.

I still have some time left here, Mr. Chairman.

Mr. **Keeney**. Just to finish the point, Senator, we are not going to be inflexible with respect to it. We want to be able to use the mail and wire fraud statutes against corrupt public officials.

Senator **Simon**. All right.

Mr. **Keeney**. So if there has to be some modification, we are not inflexible.

Senator **Simon**. Let me ask you about an area on which I questioned the Attorney General, Brad Reynolds and others, and that is on the employment of minorities within the Justice Department.

Of the 373 professional attorneys in the Criminal Division, you have 8 black males, seven Hispanic males, 1 Asian male, and 4 black females. It is not a particularly impressive number.

Mr. **Keeney**. Are these professionals or non-professionals, or both, Senator?

Senator **Simon**. My memo here from my staff says of the 373 professional attorneys in the Criminal Division, you have eight black males, seven Hispanic males, one Asian male, and four black females.

Mr. **Keeney**. I would question that figure, Senator. Could I get back to you on that, Senator?

Senator **Simon**. Yes.

Mr. **Keeney**. I think we have more. I might mention that we have a female Deputy Assistant Attorney General, and the individual who is going to be named as Assistant Attorney General for the Criminal Division is a black United States Attorney.

You are talking about the present situation. I will try to get back.

Senator **Simon**. All right.

Mr. **Keeney**. I question the figures, Senator, but I will let you know.

[The following letter was subsequently supplied for the record:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

03 NOV 1988

The Honorable Paul Simon
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Senator Simon:

This is in response to your letter of October 6, 1988, concerning minority attorney hiring within the Criminal Division.

As of October 20, 1988, the Criminal Division had 373 attorneys on duty, of whom eight are black males, six Hispanic males, eighty-four white females, one Asian female, and four black females. These figures are lower than those provided to Senator Biden in July and reflect a general decline in the number of attorneys on board. Indeed, the Criminal Division has had a hiring freeze since January of this year and based on a projected Criminal Division deficit for this fiscal year, the hiring freeze is likely to continue indefinitely. They began this fiscal year with 712 employees on board. Yet, even with severe fiscal restraints in place funds are available for only 650 employees. Under the circumstances, I foresee little or no attorney hiring by the Criminal Division this fiscal year and little or no opportunity to improve their minority hiring.

I can assure you that this situation gives Mr. Edward Dennis, Assistant Attorney General of the Criminal Division, and me great distress. Mr. Dennis' commitment to minority hiring is not just based on moral and legal grounds, it is the result of firsthand observation. Please be assured that to the extent finances permit, we will urge full minority representation throughout the Criminal Division. We fully share your commitment to minority employment opportunities.

Sincerely,

Thomas M. Boyd
Assistant Attorney General

Senator Simon. We got these, I have been advised, from the Congressional Research Service, which got them from the EEO office of the Justice Department.

U.S. attorneys—we have 87 white males, 2 black males, 2 Hispanic males, 4 white females. Again, it just seems to me we can, in general, do better.

And then one final question, if I still have time, Mr. Chairman——

Senator DeConcini. Go right ahead.

Senator Simon. There is a rise in hate crimes. In fact, my sense of things for a variety of reasons is there is more of a poison in the air in terms of racism today than there was a few years ago, for whatever reasons. I am not sure.

What is your division doing in terms of some of these organized groups? We have heard about a couple of them, but are you really focusing on this problem?

Mr. Keeney. The primary focus is by the Civil Rights Division. Our role in those, Senator Simon, is that we have tried to put those in the pattern of RICO prosecutions, these hate group prosecutions, those we have had in Denver, Seattle, and then in the Southwest.

We have authorized the bringing of the cases under the RICO statute so that we could get the severe penalties available. But, directly, it has been primarily U.S. attorneys and the Civil Rights Division. Our Criminal Division role with respect to them has been rather limited.

Conceivably at some point, they could come in under our organized crime program, which I defined earlier as being the principal organized criminal group in a particular area. Conceivably, some of those are getting close to meeting that test.

Senator Simon. If I could follow through since you mentioned the RICO statute, have you looked at the compromise RICO statute revision that is coming through and may be reported out of our committee very shortly? If so, would that have an adverse effect on the workings of your division?

Mr. Keeney. Senator, the RICO statute—my focus on it has been on the criminal aspect of it, and it is great. You are making it more effective as a criminal enforcement tool. We have not focused on the civil aspect except insofar as it impacts on the Federal government and State government prosecutors. You know, we are perfectly satisfied with what you are doing there.

Senator Simon. OK. Thank you, Mr. Chairman. Thank you, Mr. Keeney.

Senator DeConcini. I thank the Senator. Does he have any other questions he wants to pursue?

Senator Simon. I do not.

Senator DeConcini. Mr. Keeney, I have just a couple.

Recently, the papers have been reporting cases involving defense procurement fraud. In your statement, you make reference to it. In the May 10, 1988, Washington Post it was reported that top Army officials were warning troops in the field that they may have been using potentially defective bolts to repair tanks. It seems that stories like this one continue to surface in the newspapers.

Can you tell me how many the Department of Defense has referred to your Department for possible prosecution for defense procurement fraud?

Mr. **Keeney**. On defective parts?

Senator **DeConcini**. Well, defense procurement frauds, how many?

Mr. **Keeney**. I would have to get the figures for you, Senator. They are available.

Senator **DeConcini**. Is it in the dozens or is it in the half dozens or the twos or fours?

Mr. **Keeney**. I would say it is more in the dozen category.

Senator **DeConcini**. More than a dozen. Can you also tell us of these cases how many were prosecuted?

Mr. **Keeney**. I am sorry, Senator. I missed that. They have just given me the figure for your previous question. I was way off. They say that the various procurement fraud cases average 40 a month.

Senator **DeConcini**. Forty a month?

Mr. **Keeney**. Yes, so those would go to our procurement fraud unit and a lot of them would be referred out to the field.

Senator **DeConcini**. And how many of those have been prosecuted through trial or plea-bargained out?

Mr. **Keeney**. I would have to get that figure for you. These are cases that are referred. We screen them to determine whether or not they have any prosecutive potential or whether they should go civilly. We also make a determination whether they should go to a particular U.S. Attorney's Office or be retained by us for prosecution.

Senator **DeConcini**. Can you supply for the record how many have been prosecuted on a criminal basis and what the successful prosecution rate is and what the sentences are, if they have been sentenced, since the beginning of the program?

Mr. **Keeney**. Yes, sir.

[See appendix.]

Senator **DeConcini**. One last question. For years now, the Criminal Division has been contemplating implementation of an office automation system. It has been nearly 2 years since bids were solicited for the project.

I believe that at the time the idea originated, Miles Matthews was still with the division and worked with then Assistant Attorney General Steve Trott. The concept of the project is very appealing. It would unite all the U.S. Attorneys' Offices and criminal divisions in a single network. This would allow access to information and documents on a national scale.

I talked to Mr. Trott about this less than a year ago and he thought it was going to be outstanding. Has this effort to modernize the division's information system stalled due to lack of management since the Department departure of Mr. Weld?

Mr. **Keeney**. No, sir, but may I turn this over to Mr. Chendorain?

Senator **DeConcini**. Sure.

Mr. **Keeney**. He can give you a more precise answer, Senator DeConcini.

Senator DECONCINI. Mr. Chendorain, can you tell us what the status of the project is and what you see in the future and when it is going to be completed?

Mr. CHENDORAIN. Yes, Senator. In approximately February of 1985, a contract for a requirements analysis was entered into and a contractor came in and determined the needs and requirements for the Criminal Division

Subsequently, the Tax Division and U.S. attorneys came into the fold and decided that they needed to get an integrated office automation system. There has been extensive planning because there is also a parallel system going into place which will be a uniform office automation and case management project whereby information would be extrapolated, for example, from our project, which is called Project Eagle, into the uniform system.

Then we issued a Request For Proposal [RFP]. It is such a huge and significant undertaking that that went out in about August of 1986. The Request For Proposals came in which required evaluation. The evaluation teams got together from a technical standpoint and from a standpoint of can a vendor meet the specifications. There have been a number of amendments to that RFP; I think about 20.

Then we have gone into the live test demonstrations which we are currently conducting with a number of vendors. The live tests are where the vendor comes in, sets up their equipment and goes through the paces of performing to see if, for example, they could meet their service dates. If they say they can repair something in 1 day or 4 hours, we put them to that test and see if they can actually meet the technical requirements.

Then we will go into what is called best and final offers and then award a contract probably early 1989. The proposal by the Department is a significant one and the undertaking does include a variety of capabilities—legal research, word processing, electronic mail, calendar management, communication to outside agencies, as well as communication link-ups between us and the U.S. attorneys, us and the Tax Division, et cetera, as well as data base management and document storage and retrieval.

Part of the intent of a system such as this is so that we can be competitive with large defense counsel where organized crime kingpins, and so on, can pay large amounts of money for defense attorneys that actually have data bases, full texts of data bases where you take all of your documents in a case, automate them, and retrieve them with portable terminals actually right in the courtroom itself.

Just quickly, then, on the contract itself, we feel that there is a need for as many as 12,000 terminals. The lifetime of the system would be 8 years. That would require facilities preparation, installation, hardware, software, telecommunications, maintenance, and training.

So we have an 8-year approach, and the funding is being requested by the Department year by year over this 8-year period.

Senator DECONCINI. Is it operative now?

Mr. CHENDORAIN. No, the system is not. Currently, for example, within the Criminal Division we are still using basic, almost obsolete word processors, like IBM display writers.

Senator DECONCINI. When will it be operational?

Mr. CHENDORAIN. 1989. The award will go into effect probably in January. Several months later there will be delivery, and then the vendors will actually come in, install the equipment, and make it operational.

Senator DECONCINI. Why has it taken so long? Has this not been going on for 1½ or 2 years?

Mr. CHENDORAIN. Yes, that is true. The length of time is really related to the requirements themselves and the inability, really, of vendors normally to undergo this kind of computerized system.

There are only a very small number that are willing to even bid for this project. As they bid, of course, when they come in and do a live test demonstration, it can cost $200,000 to $300,000 just to simply set this program up.

Senator DECONCINI. And what is the estimated cost?

Mr. CHENDORAIN. The estimated total cost of the system is about $212 million over an 8-year period.

Senator DECONCINI. And what do you have in it this year for your 1989 budget?

Mr. CHENDORAIN. For 1989, they are requesting 1,000 terminals for installation and facilities preparation, which equates to $2.6 million, Senator.

Senator DECONCINI. Is it true you have had nine bids on this?

Mr. CHENDORAIN. I do not know the number of bids because I am supposedly recused from that process, since I probably will be one of the decisionmakers at the end of this. So I do not know the number or actually who the vendors are.

Senator DECONCINI. Well, I do not want this to sound critical, but it seems like an awful lot of time is going by. Are you satisfied that this is moving as expeditiously as it can?

Mr. CHENDORAIN. Recently, we reconsidered what had taken place and we have, I believe, put it on an expedited track now. The Deputy Assistant Attorney General for Administration has now taken a lead role and he is trying to expedite this project.

Senator DECONCINI. Fine. Thank you.

I have no further questions. Thank you very much, Mr. Keeney. Thank you.

Mr. KEENEY. Thank you, Senator.

[The statement of Mr. Keeney follows:]

Department of Justice

STATEMENT OF

JOHN C. KEENEY,

ACTING ASSISTANT ATTORNEY GENERAL,

CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON THE JUDICIARY,

UNITED STATES SENATE

CONCERNING

AUTHORIZATION REQUEST FOR THE CRIMINAL DIVISION

May 24, 1988

Mr. Chairman and Members of the Committee

I am pleased to have the opportunity to appear before you today to discuss the work of the Criminal Division and our 1989 budget request. For 1989, the Division is seeking a budget of $52,819,000 and 794 positions. Included in this request are increases for bank and defense procurement fraud investigations and prosecutions and for support positions for asset forfeiture equitable sharing requests and Petitions for Remission and Mitigation.

Since its inception as a formal organizational entity within the Department of Justice in 1933, the Criminal Division has evolved into a highly professional and motivated component. The Division is responsible for formulating policies pertaining to the enforcement of over 900 federal criminal statutes, for coordinating the implementation of those policies, and for conducting, either separately or in conjunction with U.S. Attorneys, the investigation and prosecution of certain offenses. In addition, the Criminal Division has jurisdiction over a limited number of civil cases that are incidental to federal criminal law enforcement activities.

Although the Division conducts its operations largely in the Washington, D.C. area, it currently has 225 of its 769 authorized staff positions stationed outside of Washington. These positions are primarily assigned to 14 Organized Crime Strike Forces that are located in 24 cities where they coordinate investigations and conduct prosecutions that are aimed at suppressing the activities of organized crime. In addition to Strike Force attorneys, other Criminal Division attorneys who are not located in Washington frequently initiate investigations and prosecutions in the field, or assist the U.S. Attorneys in their districts in the conduct of criminal prosecutions.

The Criminal Division also advises the Attorney General on matters concerning criminal law; monitors sensitive areas of law enforcement requiring coordination, such as subpoenas to attorneys and attorney fee forfeitures; provides top level representation of the Division to the Congress, the Office of Management and Budget, and the White House; establishes and implements criminal law enforcement policies; and provides leadership for coordination of federal, state, and local law enforcement relationships.

In the past year, the Criminal Division has achieved notable success in many of its endeavors, and I would like to elaborate on these accomplishments here.

The Administration has emphasized its commitment to drug interdiction and prosecution over the course of the last several years. These issues have been top priorities for the Department. The Criminal Division, in its leadership role on the Prosecution Committee of the National Drug Policy Board, was instrumental in the development of a comprehensive National Narcotics Prosecution Strategy designed to proactively target the major national and international cartels; to assist state and local prosecutors in their drug enforcement efforts; and to ensure that other significant local and regional narcotics threats are adequately addressed.

Other accomplishments in this area include: establishing new joint Justice-Treasury Operation Greenback offices in San Antonio and San Francisco to target money laundering activities by Mexican and Asian drug traffickers; indicting 70 defendants in two operations in Puerto Rico in which $2.5 million in cash and property were seized; publishing a handbook explaining the provisions of the Anti-Drug Abuse Act of 1986, suggesting methods for implementation; concluding a highly successful multi-agency, international money laundering investigation that resulted in seizures of 18,107 pounds of cocaine, 5,672 pounds of hashish, $3.6 million in cash and $15 million in jewels and assets; and chairing the U.S. working group on the proposed U.N. Convention against the Illicit Traffic in Narcotic and Psychotropic Substances.

During 1987, our efforts to stem the prevalence of organized crime continued. In this regard, numerous RICO cases involving labor racketeering, public corruption, mob violence, narcotics trafficking, and infiltration of legitimate businesses were initiated and concluded in our continuing efforts to place pressure on La Cosa Nostra. We were also successful in obtaining convictions against major organized crime figures, including Chicago syndicate bosses "Joey Doves" Aiuppa and "Jack the Lackey" Cerone, Colombo family underboss Joseph "Piney" Armone, Bruno family boss Nicodemo Scarfo, and New England underboss Gennaro Anguilo. In addition, the Division evaluated the threat posed by newly emerging criminal groups and developed a law enforcement plan to address the growing Asian organized crime problem.

More effective cooperation with the law enforcement agencies of foreign governments continues to be one of the important activities of the Criminal Division. We have now negotiated new Mutual Legal Assistance treaties with Thailand, Canada, Germany, Belgium, Mexico and the Bahamas. We also signed cooperative agreements in narcotics cases with the Turks and Caicos Islands, British Virgin Islands, Montserrat, and Anguilla. In the last year, the Criminal Division responded to 239 extradition requests from foreign governments and referred 333 requests to foreign governments; it submitted 138 requests for mutual legal assistance and responded to 216 such requests; and it arranged for the transfer of 27 U.S. prisoners to foreign custody while 19 U.S. nationals held in prisons abroad were transferred to U.S. custody.

Another area in which the Criminal Division has focused considerable attention has been in addressing the Attorney General's priorities in obscenity and child pornography. Although 1987 was the first year of operation for the newly established National Obscenity Enforcement Unit, the Unit has already presented numerous training seminars for prosecutors and law enforcement officials from all levels of government and the public sector, giving them the skills necessary to initiate more effective and numerous investigations and to develop stronger prosecution case strategies. The Unit was instrumental in coordinating and assisting in first ever "dial-a-Porn" convictions and in the planning of the two largest child pornography undercover investigations which have produced over 150 indictments for violations of the federal Sexual Exploitation of Children statutes. Largely as a result of the efforts of this component, the number of defendants in obscenity cases increased seven-fold, while child pornography cases also increased from 147 in 1986 to 244 in 1987. For this fiscal year, we are projecting over 300 child pornography cases will be handled.

Turning to the Division's resource request for 1989, the proposed budget will provide for an additional 25 positions and $2,311,000 over the currently authorized levels for 1988. The funding increase includes $1,069,000 in adjustments to the base and $1,242,000* in program increases to 1989.

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* The funding for each program increase provides not only for the compensation and benefits of the additional personnel but also for travel expenses, space assignments, equipment rentals, litigation expenses, automated litigation support and other costs relative to the program increase described in the budget submission.

Included in our overall budget request, we are seeking $1,052,000 to respond to the increased demand to investigate and prosecute bank and defense procurement fraud cases. The rate of bank failures and allegations of wrongdoing by bank officers and employees are at peak levels in the United States. In 1984, the FBI completed bank fraud and embezzlement investigations involving estimated losses of $382 million; in 1985, the estimated losses investigated by the FBI amounted to $841 million; and in 1986, the estimated losses were recorded at $1.1 billion. To address the bank fraud problem, the Attorney General adopted a plan of action in February 1987 to intensify the Department's bank fraud prosecution effort. In responding to this request, the Criminal Division's Fraud Section increased its efforts dramatically by establishing bank fraud task forces in Dallas, Texas, and in Oklahoma City, Oklahoma. At the request of the United States Attorney and bank regulatory agencies, we are actively considering establishing another task force in the Southeast. In addition, the Division has made attorneys available on an ad hoc basis to help other United States Attorneys. Presently, we are providing this kind of assistance in Oregon, Vermont, Wyoming, the Western District of Louisiana, the Southern District of Iowa, the Eastern District of Virginia, and the District of Columbia. As of February 29, 1988, there were 697 bank fraud referrals each involving losses over $100,000 and identifying 1,374 bank officers or directors as subjects in the Division's Fraud Section's Bank Fraud Tracking system. In order to ensure that the Division is capable of responding to the accelerating rate of cases, we will require fourteen positions (9 attorney and 5 support positions) and related funding in 1989.

An increase of six positions (3 attorney and 3 support positions) is requested to assist in the investigation and prosecution of defense procurement fraud cases. The prosecution of defense procurement fraud is one of the Attorney General's highest priorities. It is a priority which recognizes the direct and substantial impact that defense procurement has on the federal fisc as well as the potential threat it represents to our national security and to the lives of our military personnel. Since its creation in 1982, the Division's Defense Procurement Fraud Unit has focused on four major abuses committed by Defense contractors; (1) mischarging of costs, (2) defective pricing, (3) substitution of substandard or defective materials in products furnished to the Defense establishment, and (4) attempts to influence procurement decisions through bribery or extortion. These cases are very labor intensive, requiring thousands of work hours to sort through millions of pieces of documentation and assemble the evidence necessary to prosecute the defendants effectively.

I am pleased to tell you that these actions have been productive from both a criminal enforcement and fiscal standpoint. During the last ten months our actions in this area have been directly responsible for the restoration of over $31 million to the treasury as a result of our involvement in civil and administrative settlement negotiations as well as criminal fines imposed upon the seven individuals and two corporations convicted of defense procurement fraud. In addition, the Government has been saved more than $10 million in fees and costs that would otherwise have been paid. As with most successful programs, success breeds more work, and the workload now confronting the Defense Procurement Fraud unit continues to exceed its current capacity to investigate, review and prosecute viable cases. Accordingly, the additional positions and related funding ~~have~~ been included in the Division's 1989 budget request.

For 1989, an increase of 5 support positions and $190,000 is requested to assist in the rapid and appropriate disposition of Petitions for Remission and Mitigation and equitable sharing requests handled by the Asset Forfeiture Office. In 1987, the Criminal Division's expanded asset forfeiture efforts contributed to the total income of $177 million in the Assets Forfeiture Fund.

I would like to thank the Committee for the opportunity to present these remarks, and will be pleased to try to answer any questions the Chairman or any Members may have.

Senator DeConcini. The committee will stand in recess, subject to the call of the Chairman.

[Whereupon, at 11:13 a.m., the committee was adjourned.]

DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION AUTHORIZATION FOR FISCAL YEAR 1989

THURSDAY, MAY 26, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:00 p.m., in room 226, Dirksen Senate Office Building, Hon. Paul Simon presiding.

Also present. Senators Kennedy, Metzenbaum, Thurmond, Simpson, Grassley, and Humphrey.

Staff present. Deborah Leavy, Chief Counsel.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. The committee will come to order. We're on oversight hearings on the Civil Rights Division of the Justice Department and I appreciate your accommodating your schedule to one of my colleagues on the Republican side, whom I assume will be here shortly.

I would be less than candid if I didn't say that I share the feeling of a great many people who have serious concerns about where we're going in the Justice Department, and specifically your department.

When I read a memo from you, Mr. Reynolds—and for the record, our witness today is Brad Reynolds, who is the Assistant Attorney General and Counselor to the Attorney General—when I read a memo that says: "We must polarize the debate. We must not seek consensus; we must confront."

I see that you are Counselor to the Attorney General. I can begin to understand why the Attorney General gets into difficulties. It seems to me clear that confrontation is not the aim of Government; our goal should be to achieve rights for our people.

When I look at what is happening in the Civil Rights Division, I'm reminded of a State senator I served with in the Illinois State Senate who knew an incredible amount of detail about history, but seemed to totally fail to understand the meaning of history. And in the Civil Rights Division what I sense is a comprehension of the details of the civil rights laws, but a lack of comprehension of the intent and the sweep, and where we ought to be going as a people.

Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Thank you, Mr. Chairman. I want to thank the Chairman for conducting this hearing.

At the outset, I believe you did, Mr. Chairman, include in the record the memorandum. Am I correct?

Senator SIMON. I did not, but I will do that.

Senator KENNEDY. But I, too, want to reference that particular document that was prepared by our witness today, the Assistant Attorney General William Brad Reynolds.

It is a February 22, 1988 memorandum addressed to Heads of Department Components, and it is entitled, "A Strategy for the Remaining Months." The memo sets forth what it describes as "an issue-by-issue analysis that where possible proposes means of polarization" on a number of controversial issues, from AIDS to capital punishment to prison conditions. In addressing these issues, Mr. Reynolds said: "[W]e must polarize the debate. We must not seek 'consensus,' we must confront."

Those are strange words coming from a person who is supposed to be the head of the Civil Rights Division of the Department of Justice. The principal responsibility of that division is to fight polarization, not to promote it. But it is all too clear that when it comes to civil rights under the Reagan administration, Reynolds is the name and polarization is the game. Not just this month or this year, but in all the years of this administration.

It was Mr. Reynolds who engineered the administration's defense of tax breaks for segregated schools, but the Supreme Court said no.

It was Mr. Reynolds who led the fight to gut the Voting Rights Act, but overwhelming majorities in the House and Senate strengthened the law and extended it instead.

Mr. Reynolds tried to revoke the executive order requiring affirmative action, but he found Congress prepared to stand its ground, and the order stood.

Mr. Reynolds persuaded the President to cast the first veto in 121 years on a civil rights bill, but Congress overrode Mr. Reynolds' veto, enacted the Grove City law, and refused to take America back to the days of President Andrew Johnson.

On issue after issue, Mr. Reynolds' efforts to polarize public opinion and roll back the clock on civil rights have failed. In spite of his scorched-earth, anticivil rights campaign, the American people are still united in support of progress toward genuinely equal justice in our society. They have rejected Mr. Reynolds' calls for retreat, and they are prepared to move ahead.

Three years ago, this committee determined that Mr. Reynolds' hostility to civil rights disqualified him for higher office in the Justice Department. We refused to confirm him to be Associate Attorney General. But in a flagrant display of disrespect for the Senate and the rule of law, Attorney General Meese made an end run around the Senate. He appointed Mr. Reynolds Counselor to the Attorney General, and gave him additional, undeserved supervisory responsibilities in the Department.

Now the Attorney General is consumed with the effort to defend himself against charges of wrongdoing, conflict of interest, and the investigations by the Special Prosecutor. Mr. Reynolds has filled the vacuum and assumed even greater authority in the Justice Department.

Mr. Meese may or may not be Attorney General much longer. For the good of the country, when he leaves, he should take Mr. Reynolds with him; and perhaps in the remaining time of this administration, we can have a new Assistant Attorney General who will begin to restore the good name of the Justice Department and the proud name of the Civil Rights Division.

Senator SIMON. Senator Thurmond.

OPENING STATEMENT OF SENATOR STROM THURMOND

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, today we are continuing our hearings to review the Department of Justice authorization request for fiscal year 1989. This afternoon we will turn our attention to the Civil Rights Division, hearing from Assistant Attorney General Brad Reynolds.

Mr. Reynolds, I want to welcome you here today and there is no doubt that you will submit a statement; that you are prepared to discuss the enforcement of civil rights laws by your division. I commend you for your leadership as head of the Civil Rights Division, and it is clear from the record of your division that the Reagan administration is committed to enforcing individual civil rights under our Constitution and Federal statutes.

Your prepared statement highlights continued vigorous efforts by the Division to safeguard the civil rights of all citizens by a colorblind application of the Constitution and civil rights laws.

The Civil Rights Division of the Department of Justice has an enormous responsibility in protecting the constitutional and Federal statutory rights of all of our citizens. With the enactment and expansion of various Federal statutory rights, we have seen a substantial growth in the responsibility of the Civil Rights Division since its creation in 1957.

The Division is our Nation's watchdog to combat discrimination against Americans in a number of areas including employment, housing, education, voting, public accommodations and others.

The concept of budgetary restraint and fiscal responsibility are beginning to receive the serious attention they deserve in Washington. The Civil Rights Division has not been immune to the Gramm-Rudman Act or the Emergency Deficit Reaffirmation Act of 1987. Yet the Division continues to be effective, and has recently filed a record number of civil cases and criminal prosecutions.

Prosecutions of criminal civil rights violations continues to grow, and last year the criminal section filed its largest number of cases since this section was created. Likewise, the Employment Litigation Section has filed a record number of cases; and while successful in pursuing back pay awards for many victims of discrimination. Activities in other areas of responsibility under the Civil Rights Division clearly demonstrate the dedication of the Reagan administration to enforcing our Nation's civil rights laws.

Mr. Chairman, I think it is important to emphasize the purpose of today's hearing. Mr. Reynolds was asked to appear today and testify on the Civil Rights Division of the Department of Justice. We are here to discuss and receive testimony on the Civil Rights Division, their enforcement of the civil rights laws, and their budgetary request for fiscal year 1989.

Mr. Chairman, it is my hope that this committee will focus on the subject of today's hearings and not digress into a partisan report card on activities at the Department of Justice.

The litmus test of Mr. Reynolds' effectiveness as head of the Civil Rights Division should not be his ability to articulate a defense on allegations against the Attorney General.

Therefore, Mr. Chairman, I look forward to hearing from Mr. Reynolds on the Civil Rights Division and their requested authorization for fiscal year 1989.

Thank you, Mr. Chairman.

Senator SIMON. Senator Metzenbaum.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Mr. Chairman, one of the saddest developments in this country is the loss of respect for this Nation's Justice Department. This Nation is a Nation of laws, and our young people are taught from their first days in school to respect the law, to respect those who enforce the law. Not since the days of Watergate have we seen the spectacle we are witnessing in the Department of Justice.

You, the Attorney General, your colleagues, have tried to undermine the Constitution and reduce the authority of the Supreme Court. You have continually downplayed the importance of ethical rules. You have continually shown contempt for Congress.

The Senate rejected your nomination to be Associate Attorney General, yet the Attorney General plays a cute game, and gives you major authority over the operations of the Department regardless of the Senate's position.

I will have questions later. I must tell you that I think this Department will go down in history as the "Department of Injustice."

I would gather, Mr. Reynolds, that the eight people I look at in the front row, I assume that all of them are here from the Department of Justice as a supporting cast for your presentation today. Is that correct, Mr. Reynolds?

Mr. REYNOLDS. I think most of them are, people for several rows back are here from the Division to answer questions that you might have.

Senator METZENBAUM. We are certainly happy to welcome all of them, but I think the record ought to show that each of them are white and male.

Ms. NELSON. I am here.

Senator METZENBAUM. And you are here, too. Happy to have you. So we have eight white males, and one white female.

How long will you be with the Department?

Ms. NELSON. Tomorrow will be my last day.

Senator METZENBAUM. Your last day, OK. [Laughter.]

I don't think its a good sign that all your advisors are white and male.

Senator THURMOND. You might ask how long she's been there, Senator.

Senator METZENBAUM. Sure. How long have you been there?

Ms. NELSON. A little over a year.

Senator METZENBAUM. Thank you.

Mr. Chairman, I look forward to hearing Mr. Reynolds today, and I will ask that the witness be sworn in.

Senator SIMON. The request is that the witness be sworn in. Do you have any objection to that?

Mr. REYNOLDS. I don't have any objection.

Senator SIMON. If you will stand and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REYNOLDS. I do.

TESTIMONY OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Senator SIMON. Do you have an opening statement?

Mr. REYNOLDS. Mr. Chairman, I have a formal statement that I have submitted to the committee. I have some remarks I'd like to make preliminarily, if I could, and then I'd be more than happy to answer questions.

I must say, I have sat here and listened yet again to the same sort of shopworn speeches that have been delivered all too repetitively in the last 7 years, and as usual, the polarizing rhetoric is one that takes little account at all of the actual record of the civil rights enforcement compiled by this administration during the 1980's, a record that showed unprecedented enforcement activity in all phases of Federal responsibility, from the number of investigations commenced to the number of lawsuits brought challenging discriminatory conduct, to the successes achieved, to the number of victims able to assert that the wrongs against them have been righted.

I would ask, Mr. Chairman, that the documented record of the Civil Rights Division that is reflected in this booklet, entitled "Civil Rights Division, Enforcing the Law 1981-1987" and the 1987 Year End Report be included in the full record of these proceedings along with the prepared testimony that I've submitted today.

Senator SIMON. It will be included.

[The statement of Mr. Reynolds follows:]

Department of Justice

STATEMENT

OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

SENATE JUDICIARY COMMITTEE
UNITED STATES SENATE

CONCERNING
DOJ AUTHORIZATION
ON
MAY 26, 1988

1989 Authorization Request

Mr. Chairman and members of the Subcommittee, it is a pleasure to make my final appearance before you on behalf of the Civil Rights Division to seek your budgetary authorization for the fiscal year 1989.

The Division is requesting $26,041,000 to support 409 positions and 425 workyears. This represents a program enhancement of nine positions and five workyears over our current base. Six positions and three workyears will enable the Voting Section to meet projected program increases under Sections 2 and 5 of the Voting Rights Act; three positions and two workyears will support an expanded number of investigations and cases under the Fair Housing Act. For your easy reference, the appropriations authorized during this Administration are set forth below:

Fiscal Year	Dollars	Positions	FTE
1982	17,603	385	408
1983	19,227	385	406
1984	20,700	399	416
1985	22,624	404	425
1986	22,333[1]	404	424
1987	23,601	404	424
1988	25,263[2]	400	404

Mr. Chairman, I call to your attention that by the time this Administration is over you will have authorized over $150 million to support the critically important law enforcement work of the Civil Rights Division. While there have been policy disagreements along the way -- some of them of major dimension -- throughout this active period it has been my privilege to work with the Division's dedicated attorneys and support staff in maintaining an enforcement effort in which all of us can take pride.

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[1] Reflects Gramm-Rudman-Hollings Deficit Reduction Act decrease.

[2] Reflects reduction required by the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987.

During these years of fiscal restraint and constricted budgets the Civil Rights Division has managed to achieve a record number of new civil case filings, criminal prosecutions, and determinations under the Voting Rights Act and, contemporaneously, to perform its national leadership role by contributing new perceptions to the efforts of federal judges at all levels to develop more perfect justice. I trust that the current request, which will fund the Division's activities under my successor, will provide a firm basis for the continuation of this vital program dedicated to assuring the equal rights of all Americans.

On that canvas, then, Mr. Chairman, let me capture for you a profile of what the Division has accomplished during the year since I was last here and, by projection, what we plan to do with the appropriation presently under review.

Criminal Civil Rights Violations

The Division achieved a record year last year in its enforcement of the federal criminal statutes designed to preserve personal liberties. In this past fiscal year the Criminal Section filed its greatest number of cases since the Section was organized almost 20 years ago, prosecuting 105 defendants, the third consecutive year in which over 100 defendants have been charged with criminal violations of the civil rights laws.

This was also a record year in the filing of racial violence cases, an area in which this administration has placed a special priority. The 15 racial violence cases filed this year represent the most filed in a single year since fiscal year 1976. In addition, three other cases growing out of racial violence prosecutions were filed involving violations such as perjury and willful failure to appear as a witness or defendant.

These racial violence cases were major pieces of litigation. Defendants were charged with interfering with the victims' federally protected rights, including voting, housing and public accommodations, as well as with criminal conspiracy to further the aims of the White Supremacist Movement. Four North Carolina leaders of the Carolina Knights of the Ku Klux Klan and its successor, the White Patriot Party, were convicted of conspiracy to obtain weapons, explosives and equipment by whatever means necessary, including robbery and murder, in order to maintain, train and equip a paramilitary armed force and to further the goals of the White Supremacist Movement. (United States v. Miller, et al.)

Another investigation involving white supremacists led to an indictment in United States v. Lane, et al., of four defendants charged with interfering with the employment rights of Denver radio talk show host, Alan Berg, by killing him. The indictment was the culmination of a two-year investigation that involved extensive contact with ten U.S. Attorneys and six FBI offices across the country. The trial, which was complicated and lengthy, resulted in the conviction of two of the defendants who were both sentenced to serve 150 years in prison.

Our Criminal Section was also successful this past year in its enforcement of official misconduct cases, a type of case that accounts for the majority of the Section's overall activity. A case of international scope was prosecuted in Puerto Rico, where investigators from the FBI and Customs assisted in developing evidence that two customs agents murdered a money courier to obtain almost $700,000 in cash and checks he was carrying. To establish a violation by agents acting under color of law it was necessary to obtain bank records from foreign countries and to disinter the victim's body in the Dominican Republic. With that and other circumstantial evidence both customs agents were convicted on all eight counts of a felony indictment and received 120-year prison terms (United States v. Maravilla and Dominguez).

In North Carolina, a federal inmate being transported from Alabama to Pennsylvania was asphyxiated when his mouth was taped shut by a correctional officer. The officer ultimately pled guilty to a two-count indictment and was sentenced to nine years in prison. In preparation for trial, it was necessary to survey all federal penal institutions to determine the extent and effect of other taping incidents, to conduct almost 1,000 interviews, and to reconstruct a model of the victim's head with the assistance of medical experts and anthropologists to establish the cause of death (United States v. Dale).

Other official misconduct cases prosecuted include a correctional officer who was convicted and sentenced to 12 years' imprisonment for the shooting death of an inmate while playing Russian Roulette with a loaded pistol; an Oklahoma county sheriff and five others who pled guilty for attempting to coerce confessions from two burglary suspects by beating them with gun barrels and blackjacks and then later hiring a hit man to kill them when it was learned they reported the beating to the FBI; and, a state judge in Texas who was found guilty by a jury of promising probation or dismissal of charges against female defendants if they would engage in sexual acts with him.

The Criminal Section continued its concerted efforts to enforce statutes designed to deter the victimization of migrant workers and others held in bondage. Allegations of involuntary servitude and peonage, particularly involving migrant workers, have been decreasing over the past few years. Nonetheless, the Criminal Section is currently investigating several such incidents, including one that involved two young boys who were brought to the United States from South America to sell flowers on the street and made to do housework, for which they received little money and were often beaten.

These accomplishments have been achieved by the Criminal Section at a time when investigations of violations of criminal civil rights laws are becoming increasingly complex and there is an increase in the number of cases in which assistance is requested by U.S. Attorneys' offices. The authorization being requested will help to sustain these federal efforts to remedy civil rights abuses.

Employment Litigation Section

The enforcement of Title VII of the Civil Rights Act of 1964 and Executive Order 11246 which prohibit employment discrimination on the basis of race, color, religion, sex and national origin by state and local governments and by federal contractors, is another priority area of civil rights enforcement. Since 1981 our Employment Litigation Section has substantially increased both the average number of cases filed each year and the amount of back pay awards for victims of discrimination.

In 1987 we filed a record number of lawsuits and consent decrees and recovered a substantial amount of back pay. To give a sample of our activity: We concluded settlements with the Louisiana Department of Transportation (opening entry level and promotional job opportunities for blacks), the Whitney National Bank (opening a wide range of entry level and promotional opportunities within the bank to black and female applicants), the Las Vegas Metropolitan Police Department (opening entry level and promotional law enforcement positions to minorities and women) and the Massachusetts Department of Corrections (opening entry level correctional officer positions to women). We also successfully litigated a Title VII suit before a jury against the

Pasadena Texas Independent School District (opening teacher vacancies to qualified black teacher applicants).

With the exception of the Las Vegas Metropolitan Police Department, each of these cases are now entering a stage wherein individual victims of the discriminatory practices are identified and accorded relief: a stage which will require significant resources on our part during 1988. One successful conclusion to a case in this stage occurred in April 1988 when the federal district court in Atlanta, pursuant to a consent decree between the United States and three State of Georgia agencies, approved individual relief for 1,677 persons, consisting of $1,430,000 in back pay and priority hiring into 175 jobs for 984 of these individuals. Another significant settlement occurred in March 1988 when we submitted to the federal district court in Chicago a settlement with the Chicago Police Department which grants more than $9,000,000 to 666 identified victims of discrimination in hiring and promotion.

Our efforts to secure relief from durational residency requirements for municipal employment, which effectively excluded black applicants from employment in virtually all-white suburbs in Chicago and Detroit, are nearly complete. To date, we have eliminated these illegal requirements in fourteen Chicago suburbs and seventeen of eighteen Detroit suburbs where the practices were found to exist.

We have also had an active program in the area of employment testing, both in terms of litigating against employers who utilize selection devices that have an adverse impact against minorities and women and have not been shown to be properly validated, and in our efforts to encourage defendants to develop validated selection devices. In this regard we are working with the Suffolk County Police Department, the New Jersey State Police, the New Jersey Department of Civil Service (which oversees testing for municipal police departments throughout the State), the Philadelphia Police Department, the Las Vegas Metropolitan Police Department and the Georgia State Police, in the development of a valid entry level law enforcement examination. Similar efforts are underway in the firefighting promotional area in Chicago, San Francisco and New Jersey. As a result of our initiative, significant progress is being made in the development of valid entry level and promotional examinations for use in fire departments.

Shortly after taking office, I concluded that the Division should no longer seek numerical quota relief in its employment cases, feeling that such relief was questionable as a matter of law and contraindicated as a matter of policy. I am pleased to report that, as the foregoing record indicates, this change of approach has neither caused a reduction in the number of cases filed nor occasioned any dilution in the effectiveness of relief we have obtained.

Moreover, the most recent decisions of the Supreme Court have reinforced the soundness of our remedial approach. Those cases teach that quota is indeed a highly disfavored remedy in employment discrimination cases, one that is available, if at all, only temporarily and as a last resort, where a recalcitrant employer has persisted in the most flagrant and egregious discriminatory conduct notwithstanding efforts at alternative relief; and even then, any use of race or gender preferences must be narrowly tailored to insure that the intrusion on the rights of other innocent employees or potential employees is strictly minimized.

Voting Rights

The Division's vigorous activity to enforce the Voting Rights Act and other federal statutes designed to ensure that all persons regardless of race, color or membership in a language minority group may participate effectively in the political process has continued unabated.

Since the beginning of this Administration, the Division's Voting Section has participated in 116 cases; one quarter (29) of these were lawsuits filed by the United States to enforce the guarantees of Section 2 of the Voting Rights Act. In addition, the Division filed twenty-seven (27) other actions as plaintiff and participated in sixteen (16) more as plaintiff-intervenor. These included fourteen (14) lawsuits to enforce Section 5 of the Act and ten (10) proceedings in which the Division intervened as plaintiff to defend the constitutionality of the 1982 amendment to Section 2. The United States has been a statutory defendant in twenty-seven (27) cases. Of these, fourteen (14) were actions requesting a declaratory judgment approving a voting change under

Section 5 and seven (7) involved jurisdictions seeking to bailout, pursuant to Section 4, from coverage under the Act's special provisions. Completing the litigation activity, the Division has filed amicus curiae briefs in seventeen (17) cases.

The number of changes submitted to the Attorney General for administrative review pursuant to Section 5 continues to be extraordinary. Since 1981 the Division has received over 20,000 submissions and subjected over 100,000 voting changes to Section 5 review. In that same time period, over 200 Section 5 objections have been interposed by the Division on behalf of the Attorney General, thereby preventing the implementation of over 1,000 voting changes which submitting jurisdictions had not shown to be free of a discriminatory purpose or effect.

Additionally, pursuant to the authority granted the Attorney General under Sections 6 and 8 of the Act, the Attorney General has assigned 5,000 observers to attend and monitor the balloting process in covered jurisdictions. Notable among these assignments has been a recent increase in the number of elections monitored to assure that the guarantees of effective assistance to voters who are members of a language minority group are effectuated.

As we have noted previously, the level of Section 5 activity has remained at an historically high level. In fact, in the first six months of the current fiscal year we have reviewed more submissions than in the entire 1981 fiscal year. If this pace continues for the remainder of the year (and we have every indication that it will) the Division will have received more submissions (over 4,000) than in any other previous year. The Voting Section currently consists of 28 attorneys, 19 equal opportunity specialists, and 21 support staff and regularly works overtime more than any other section. The increase in the projected workload combined with the need to prepare to handle a major influx of redistricting submissions occasioned by the 1990 Census, more than justifies the modest increase sought of six positions and three workyears.

Housing and Civil Enforcement Section

The Housing and Civil Enforcement Section enforces the Fair Housing Act of 1968, Title II of the Civil Rights Act of 1964 (which prohibits discrimination in places of public accommodations), and the Equal Credit Opportunity Act (ECOA). After having been merged with another Section by the previous Administration, this Section was re-established in November 1983. Since that time, the Section has filed 71 suits alleging violations of the Fair Housing Act, 24 suits alleging violations of Title II and 5 suits alleging violations of the Equal Credit Opportunity Act (5 of the 70 Fair Housing Act suits also included ECOA allegations). During this same period, 89 consent decrees were negotiated.

During FY 87, the Section filed 25 cases. The defendants in the 17 Fair Housing Act suits (three of which included ECOA claims) were the owners or managers of apartment complexes, real estate companies, the directors of public housing authorities, banks, the developers of time-share resort property, a mobile home sales company and the operators of mobile home parks, and a municipality. Over 1800 rental units and 1200 time share units are affected by these suits. The defendants in the eight Title II cases included restaurant-nightclubs, a boys club and a swim club. During FY 87, the Section negotiated 25 consent decrees.

It is projected that this vigorous enforcement program to vindicate the rights to nondiscrimination in housing, credit and public accommodations will not only continue but will expand. In order to carry out its mission, the Section's request to increase its total complement from 33 to 36 is a reasonable one.

Regulatory Coordination

Under Executive Order 12250, the Attorney General is responsible for coordinating implementation and enforcement of statutes prohibiting discrimination on the basis of race, color, religion, sex, national origin, and handicap in federally assisted programs and handicap in programs and activities conducted by the Federal government.

Cross-cutting statutes that apply to federally assisted programs generally are Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin, Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities, and Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap. In addition, there are upwards of 50 statutes authorizing programs that contain provisions prohibiting discrimination in the programs and activities funded under that particular statute. Section 504 of the Rehabilitation Act of 1973, as amended, also covers programs and activities conducted by the Federal government.

Unlike the other responsibilities of the Civil Rights Division, Executive Order 12250 responsibilities primarily involve working with almost 100 Federal agencies on the issuance and implementation of regulations specifying the obligations of recipients with respect to federally funded programs, and the agencies' own obligations with respect to the programs and activities they conduct.

In the last year, the Division reviewed 17 regulations for federally assisted programs and provided comments on over 60 draft Section 504 regulations for federally conducted programs and activities. Also, in the last year, 53 agencies had final Section 504 regulations for federally conducted programs and over 40 other agencies had progressed to or through the Notice of Proposed Rule Making stage. The Division also provided leadership to the various components of the Department of Justice with respect to the implementation of its Section 504 regulation that affects the Department's activities. In addition, the Division also assisted 25 agencies in developing appropriate civil rights objectives and in planning practical, attainable activities to achieve them.

Civil Rights of the Institutionalized

Our enforcement role with respect to the Civil Rights of Institutionalized Persons Act (CRIPA), continues to be an extremely active one. This statute authorizes the Attorney General to initiate actions on behalf of civilly and criminally institutionalized persons where "egregious or flagrant" conditions exist that deprive those persons of federally protected or constitutional rights.

Since the enactment of CRIPA, the Special Litigation Section of the Civil Rights Division has initiated 92 investigations in 34 states and 2 territories, involving 101 institutions and the rights of tens of thousands of persons confined in covered mental health, mental retardation and nursing home facilities, and prisons, jails, and juvenile reformatories.

Twenty-five facilities are currently covered by consent decrees requiring State and local jurisdictions to afford the relevant constitutional protections. We are monitoring enforcement of these decrees. Numerous other facilities have corrected deficiencies resulting in constitutional or federal statutory violations through voluntary remedial efforts.

Indeed, the Department's proper emphasis on the voluntary resolution of problems in facilities of this kind has avoided costly adversarial litigation and brought immediate benefits to thousands of institutionalized persons. These improvements include new facilities, increased professional and support staff, vastly improved medical care and other programs -- treatment for the mentally ill; training for the mentally retarded -- and safety for all citizens who find themselves in public institutions.

In FY 1987, we brought seven lawsuits, initiated seven new CRIPA investigations, resolved five suits by consent decree, and obtained seven stipulations or orders resolving significant issues. We are engaged in major litigation with the State of Oregon regarding a mental retardation facility.

In sum, a practical, vigorous and effective enforcement program under this statute has produced rich results and is expected to continue.

Public Education

Thirty years after the Brown decision, many school districts continue to operate under court-ordered desegregation plans in suits filed by the government or private plaintiffs, and many others have come into compliance voluntarily. Some states have put in place units to monitor and enforce discrimination problems in the pubic schools, and in some instance we have worked cooperatively with such units to ensure that appropriate action is taken at the local level.

Some complainants have oftentimes filed private suits pursuant to more liberal state laws, rather than file complaints with federal agencies which must act under what some view as more restrictive federal laws. In sum, the focus of the Division's work has necessarily shifted from filing new suits to assuring that those court orders in place are complied with.

From time to time, however, it is still necessary for the Division to file new actions, or ask for supplemental relief in old ones.

This year we have so far filed two suits as plaintiff, including the recently filed amended Alabama higher education complaint. Two additional suits have been approved, and we are currently involved in pre-suit discussions in one; in the other, which is a higher education case, we are revising our complaint in the same manner as the Alabama complaint was amended. Suit recommendations are currently being prepared in several additional cases.

We have also filed several motions for further relief to obtain new or modified desegregation plans. In addition, we have also obtained 70 consent decrees and orders, and there are thirty (30) investigations currently in progress. The Division continued to represent the Department of Education (DOE) in several suits in which school officials have sought to enjoin DOE enforcement activities.

A number of our active cases and investigations involve second-generation issues -- e.g., disparate facilities and opportunities at predominantly minority schools, and the illegal use of quotas in admitting students to certain programs or schools. Within the last year we have litigated a number of cases and expect to conduct hearings and trials in at least 15 cases within the next sixty (60) days. Trial in the Charleston, South Carolina school case continues to this date. In short, the

Educational Opportunities Section has been and is expected to continue to be extremely busy.

In the past year the Division has given increased attention to monitoring school districts which have operated under court order for a long number of years. Annually the Division receives and reviews several hundred reports filed by these districts. Recently the Division initiated a project which involves reviewing such school districts. We are currently working with a number of districts in Georgia and Alabama and we will do the same in other states in the near future. It should be noted that this project involves seeking dismissal orders only for those school districts which have fully complied with all outstanding orders and which have no complaints pending against them. Thus, those districts which are ultimately dismissed will be ones that are now in full compliance with applicable civil rights laws.

As I mentioned earlier, another major enforcement effort at this time involves the completion of our very significant pending litigation in the higher education area. We are engaged in discovery and/or litigation with four statewide systems of higher education, Mississippi, Alabama, Louisiana, and Tennessee. Recently, for purposes of our amended complaint, we completed a major project of collecting and analyzing federal financial assistance information provided by federal agencies to Alabama public institutions. We are currently involved in both settlement negotiations and discovery in the Louisiana case in preparation for a September 1988 trial. Depending on the outcome of our appeal, we may be back in a litigation posture in the Mississippi case soon.

On the remedial side, the strides we have made toward the achievement of true equal education-opportunity is nothing short of remarkable. As you know, this Administration has taken the position in a number of cases that mandatory busing to achieve or maintain racial balance in schools is neither an equitable nor an efficacious remedy. We have therefore offered alternative relief better calculated to achieve meaningful desegregation in an enhanced educational environment.

To this end, we fashioned a blueprint for constitutional compliance through combinations of devices such as school closings, boundary adjustments, magnet schools and programs, and incentives for voluntary transfers. Notwithstanding initial criticism, it is apparent that this alternative formula has gained widespread acceptance by litigants and courts alike as a more effective desegregation approach. In cities as diverse as Chicago, Bakersfield, Huntsville, and Savannah, plans conceived cooperatively between school officials, the government, and private litigants are beginning to work. Educational opportunities have been enhanced and positive desegregation results achieved. Parents and students have demonstrated time and again that they will seek out quality educational programs wherever they can be found. Our alternative to "forced busing" works to promote race relations in an exciting learning environment, not reinforce inclinations of separateness that prompt flight from the public schools to more educationally hospitable environs.

We continue to be encouraged by the results and plan to continue and expand our efforts -- in this way, the national goal of eliminating purposeful segregation can be achieved in the most sensitive and sensible way.

Appellate Activity

The legal precedents which guide the enforcement in federal district courts of all federal laws relating to civil rights are established by the decisions of higher level reviewing courts. A favorable district court decision is, therefore, meaningless if it is reversed on appeal. Accordingly, much of the success of the Division's enforcement programs depends on our effectiveness in appellate work.

We have an active appellate program which not only handles civil rights cases in which the government is a party, but also seeks out and files friend-of-the-court briefs on significant civil rights issues under consideration in other litigation. Our Appellate Section, which currently consists of 12 lawyers and 10 support staff, is responsible for writing and filing party and amicus briefs in the courts of appeals, for representing the United States at oral argument there, and for drafting the party and amicus briefs for the Solicitor General's office in civil rights cases before the Supreme Court.

The section also develops (as requested) new legislation or modifications or amendments to existing legislation; comments on the civil rights legislative proposals of others; and provides legal counsel to federal agencies and other components of the Department responsible for the administration and development of programs with civil rights implications.

During this Administration, the Civil Rights Division has filed more than 200 briefs or substantive papers in the Supreme Court and about 355 in the courts of appeals. As of May 15, 1988, the Supreme Court had rendered 68 merits decisions; 45 of those decisions were fully or partially favorable to the Division, representing a success rate of 66%. As of the same date, we had prevailed in 198 of the 245 courts of appeals merits decisions, an 81% success rate. Our court of appeals success rate for the last fiscal year (FY 1987) was particularly high: 84%. Our overall success rate in the Supreme Court and courts of appeals is 78%.

A sampling of our filings in the Supreme Court discloses that we have successfully argued significant matters with far reaching implications for civil rights: that a district court correctly refused to preclear a city's annexation of two parcels of land -- one all-white and one vacant but slated for likely white development -- on the ground that the annexations had the purpose of abridging the voting rights of blacks, Pleasant Grove v. United States, 55 U.S.L.W. 4133 (U.S. Jan. 21, 1987); that Title VII imposes a duty to eradicate salary disparities between white and black workers that originated before the Act became applicable to public employers, Bazemore v. Friday, 478 U.S. 385

(1986); that a school-district's race-based lay-off quota violated the equal protection rights of innocent third parties, Wygant v. Jackson Board of Education, 476 U.S. 267 (1986); that the Equal Protection Clause prohibits revoking a parent's child custody because the parent marries a person of a different race, Palmore v. Sidoti, 466 U.S. 429 (1984); that state courts in Mississippi must comply with Section 5 of the Voting Rights Act, Hathorn v. Lovorn, 457 U.S. 255 (1982); that employment discrimination by federal aid recipients based on handicap is prohibited under Section 504 of the Rehabilitation Act of 1973, even where the primary purpose of the federal aid is not to provide employment, Consolidated Rail Corp. v. Darrone, 465 U.S. 624 (1984); and that a female associate of a law firm had stated an employment discrimination claim by alleging that consideration for partnership was a term or condition of employment, and that she had been denied equal consideration for partnership on the basis of her sex, Hishon v. King & Spalding, 467 U.S. 69 (1984).

Alien Issues

As part of the Immigration Reform and Control Act of 1986, there was established in the Department of Justice as an independent office, the Special Counsel for Immigration Related Unfair Employment Practices. This office is charged with preventing hiring and firing practices based on national origin or citizenship status which violate the new statute. Because of the need to coordinate all civil rights policies, that office reports to the Attorney General through me as head of the Civil

Rights Division. While the Special Counsel has a separate budget and will be seeking authorization directly, I can report to you that this office is now in place and fully operational with an impressive number of cases and investigations underway.

I also should report that the Civil Rights Division has been called upon to support the Department's effort to provide independent panels to review denial of parole and repatriation decisions by the INS with respect to Mariel-Cubans remaining in custody. A number of attorney volunteers are participating.

Conclusion

Mr. Chairman, I am proud to have been associated with the record of civil rights achievement we set before you today. I can assure you that the employees of the Division will continue their unremitting efforts to build on this record during fiscal 1989 and request that the Subcommittee report favorably on the requested authorization.

Thank you. At this time I would be pleased to respond to any questions that the senators care to propound.

[The information of Mr. Reynolds; the booklet "Civil Rights Division, Enforcing the Law 1981-1987" and the 1987 Year End Report was not available at press time.]

Mr. REYNOLDS. Beyond that, I would just like to make a few brief opening remarks, if I may, before turning to the questions.

This is in all likelihood my last appearance before this committee to testify on behalf of the Civil Rights Division's annual appropriation request. In reflecting on that circumstance, it occurred to me that at least someone should display enough candor to mention the overarching accomplishments of this administration over the span of my tenure as Assistant Attorney General, and they are considerable.

In 1980, at the time President Reagan was first elected to office, the Ku Klux Klan was a force to contend with in many parts of this country. Its recruitment was strong, its contributions were flowing, membership was on the rise, and there was open collaboration with other hate groups like the Aryan Nation and the Posse Comitatus.

Today the Klan is all but obliterated. Prosecutions and convictions by the Reagan Justice Department have decimated its ranks. There is no meaningful recruitment. Funding is dried up. Membership is rapidly dwindling and other hate groups are suffering from the same relentless law enforcement attack. The 7 year war on these hate groups and all they stand for has taken a severe toll, and we plan no letup in the months remaining.

In 1980, at the time President Reagan was first elected to office, blacks and other minorities in this country were effectively closed out of the electoral process; essentially bystanders with little influence. Today, as a direct result of this administration's enforcement of section 5 of the Voting Rights Act, we are seeing full and effective participation by blacks and other minorities at elections at all levels; Federal, State and local.

This has come about because the Regan Justice Department, faced with literally hundreds of thousands of voting changes as a consequence of the wholesale redistrictings across the South and in other regions of the country following the 1980 Census, insisted that every single voting change, from a massive Statewide redistricting to a minor relocation of a polling place, be free of discriminatory purpose and effect before it received our preclearance.

In our first term, we sent back as unacceptable at least one redistricting plan in every covered State except Alaska. We changed the electoral landscape in the 1980's, dramatically, and equal voting opportunity finally became a reality to all those Americans who, prior to 1980, had effectively been shut out of the system.

In 1980, at the time President Reagan was first elected to office, virtually the only accepted response to segregated public schools was the remedy of forced busing. With all of its dire consequences; white flight, parental disassociation from the child's school life, educational neglect, community divisiveness.

Today that remedy has been largely discredited, replaced by a series of thoughtful programs designed to refocus attention on the educational component of *Brown* vs. *Board of Education.*

Comprehensive magnet school programs, modeled with the help of the Federal Government, strategically selected and located, have served in many jurisdictions to be a drawing card back to the public schools by students wanting to learn and starving for a meaningful learning experience.

No longer is the preoccupation of our public schools with transportation, as was the case throughout the 1970's. It is with quality education as a tool to enhance the desegregation mandate.

In jurisdictions as diverse as Boston, MA; Bakersfield, CA; Chicago, IL; Shreveport, LA; Norfolk, VA; Boston, TX; Oklahoma City, OK; and in Prince George's County, MD, to name just a few, the costly experimentation with forced busing has given ground to a variety of alternative programs that have as their common element the magnet school concept as a constructive educational force for positive desegregation.

We were challenged, in 1981, to come up with a better idea, and we did. In 1980, at the time President Reagan was first elected to office, race and gender quotas were standard fare in the employment arena. People routinely got jobs or lost them, got promotions or were passed over, got ahead or were held back because of their skin color or sex.

So-called affirmative action discrimination ran rampant, condoned, while discrimination of other kinds and varieties were condemned. The principal of equal opportunity had taken a back seat to the cry for equal results; and we were moving toward proportional representation of race, gender and National origin as the grounds for getting by in the work place.

Today we no longer hear much support for quota relief. The principal of non-discrimination has reemerged as protection for all Americans, white or black, brown or red, male or female, and of whatever Nationality.

Preferential treatment along color or gender lines has lost its affirmative luster and is generally recognized for what it is: unlawful discrimination that demeans those preferred every bit as much as it offends those disfavored.

Thanks to a series of Supreme Court decisions, we are finally, after a 7 year effort, climbing back onto the equal opportunity high road in employment. Affirmative action preferences are available, if at all, the Court has told us in no uncertain terms, only rarely and for a brief interlude, as a narrowly tailored measure to remedy flagrant and egregious discrimination that persists in the face of other serious but unsuccessful efforts to correct the employer's wrongdoing.

In all other circumstances, applicants for employment or advancement are entitled to selection or promotion on the basis of individual talent, industry and worth, not group-oriented characteristics. In 1980 at the time President Reagan was first elected to office, the bulk of the Justice Department's enforcement activity under the Fair Housing Act had been dispersed to U.S. Attorneys Offices around the country. Because of other more pressing investigative and litigation responsibilities, the U.S. attorneys' limited resources, fair housing enforcement virtually dried up.

Today, as a direct result of a series of management changes I initiated that returned this enforcement activity to main Justice and assigned it to a separate litigation section within the Division, fair housing enforcement is back at the high levels in terms of investigations initiated, litigations instituted, and favorable results obtained.

With passage of a constitutionally-acceptable set of amendments to the Fair Housing Act, as this administration has been urging for the past several years, we will hopefully get stronger legislation and a more streamlined enforcement process.

In 1980, at the time President Reagan was first elected to office, only the most minimal efforts had been made to promulgate implementing regulations governmentwide under the 1978 amendments to section 504 of the Rehabilitation Act of 1973, which applied the ban on handicapped discrimination to federally-conducted activities.

Today may agencies have had regulations in place for some time, and the Federal Government is much more sensitive to the needs of persons with handicaps. This major achievement fulfills a long overdue promise that the Federal Government made to individuals with handicaps in this country.

In 1980, at the time President Reagan was first elected to office, there was a new and as yet untried statute in the Federal Code, the Civil Rights of Institutionalized Persons Act, or CRIPA. During this decade of the eighties, that statute has been vigorously enforced by the Civil Rights Division to correct egregious and flagrant unconstitutional conditions at mental institutions, at prisons, jails and juvenile detention centers, and at State-owned hospitals and nursing homes, conditions that all too frequently were wholly insensitive to the resident's basic medical needs and physical safety.

Today, through the persistent and effective enforcement of CRIPA, some 101 targeted institutions in 32 States and 2 U.S. territories have been or are in the process of being investigated. We have obtained 18 consent decrees, covering 22 institutions. Litigation is proceeding in other cases, and many other institutions have made necessary improvements to obviate the need for litigation.

This extraordinary record has been accomplished with a minimum amount of litigation so as to maximize cooperation at the State and local levels and ensure that the State's scarce resources will be available for use in improving the deplorable conditions at these facilities at the earliest practical time.

This remarkable record of accomplishments, which is fully documented in materials made available to this committee not only today but over the past 7 years, puts the lie to those bombastic assertions that we have turned back the civil rights clock, or been inattentive to our law enforcement responsibilities in this vital area.

The fact is that the administration has done far more than our immediate predecessors to expose and challenge discrimination based on race, gender, religion, handicap national origin.

We have refused to treat minorities and women as second class citizens, entitled only to token participation in the work place. We have refused to allow the educational component of *Brown* vs. *Board of Education* to be left behind at the bus stop, insisting that those students attending our public schools not only have a means to get to the school house, but can indeed look forward to a meaningful, quality education experience once inside.

We have refused to allow the electoral landscape to be reshaped yet again to deny full voting opportunities to blacks and other minorities; and we have refused to abide any longer the outrageous activities of the Klan and other similar hate groups.

This momentum will carry forward into the next administration, of that I am certain. Discrimination is still an evil in our society that we must contend with. Great strides have been made, but there remains much yet to be done.

For example, this body, remarkably, along with the House, continues to hold itself above the civil rights laws, insisting that everyone else in the country be subject to these statutes while shamefully exempting Congress from the antidiscrimination provisions.

I would urge this committee to follow Senator Leahy's lead and the House to follow the lead of Congresswoman Lynn Martin and finally, more than 30 years after *Brown,* to correct this indefensible state of affairs.

It is almost laughable to sit here and listen to these grand protestations by Members of Congress about this administration's civil rights record, repeatedly peppered with the familiar refrain of "turning back the clock of civil rights" when this Chamber has not yet seen fit in over 200 years to reach out and even once wind the civil rights clock that watches enforced silence over its activities.

If your commitment to civil rights is a serious one, it is time that both Houses of Congress gave their high-sounding rhetoric some credibility. After all, to the American people, it is not nearly so much what you say as what you do that is the true measure of your sincerity. It sure would be nice to have you sincerely on board.

Thank you, Mr. Chairman. I will now happily answer any questions the committee might have.

Senator SIMON. Thank you, Mr. Reynolds.

Senator Grassley has joined us. Do you have an opening statement?

Senator GRASSLEY. Mr. Chairman, I do not have an opening statement. Thank you for the opportunity to give one.

Senator SIMON. If there is no objection, we will abide by the 10-minute rule here on the committee.

Mr. Reynolds, I think you have illustrated once again your admonition in your memorandum to polarize. I happen to be one who is cosponsoring Senator Leahy's proposal; I think Congress can do much better.

But I am concerned. You talked about the "polarizing rhetoric of those on the committee" here just a little while ago. In later questioning, I intend to get into the civil rights aspects more, but just as you view things in general, do you really believe it is wise for a Government official who ought to be pulling people together in this Nation, to make us one family, to say: We must polarize the debate, we must not seek consensus, we must confront?

Is that really prudent advice to the Justice Department of the United States of America?

Mr. REYNOLDS. Well, I think it's very prudent. Stole a page from your own book. That's the way that everybody who is engaged in meaningful debate operates. If you are going to have a debate on issues where there are different views expressed, especially those that tend to pay less attention to facts than fiction, there is a need to engage in some kind of polarization of the debate.

A debate, by its terms, is one that suggests polarization; and I think it is wise to state the issues as we see them forthrightly and honestly; to indicate where the other side has misstated forthrightly as well, and that will result in polarization. It's the same polarization that Senator Kennedy and Senator Metzenbaum engaged in at the outset of this hearing.

I don't have any problem with that; I think that's the way the system operates in our country anyway, and it seems to me we ought to be forthright and say that we do that; we state these things forthrightly, and the polarization is probably healthy.

Senator SIMON. I guess your answer would be proper if you were the coach of a debating society. You are instead the Counselor to the Justice Department, and that ought to be the symbol of justice that pulls people together.

In the following paragraph, in that same memorandum, you say, on drugs: Overall, we should send the message that there are two ways to approach drugs; the soft, easy way that emphasizes drug treatment and rehabilitation versus the hard, tough, approach that emphasizes strong law enforcement measures and drug testing. Naturally, we favor the latter.

Is it really, Mr. Reynolds, either/or? Can you not favor both rehabilitation and treatment and being tough on those who violate our laws in the drug field?

Mr. REYNOLDS. I don't suggest at all that you can't favor both. I would suggest to you, Senator, that we have a crisis out there, and if we don't take the tough road, if we aren't strong on law enforcement, if we don't engage in drug testing, if we don't get tough on drugs, we're not going to win it. And it is time, it seems to me, for this country all across the board to face up to that reality.

We have spent an awful lot of time, for the last number of years, taking the approach that treatment alone is enough to deal with this problem for rehabilitation; and we have come up short in a major, major way. I think it is time for everybody to open up to the fact that you have to get tough on this if we're going to get anywhere.

Senator SIMON. I don't know of anyone who doesn't believe we ought to get tough.

Mr. REYNOLDS. Good.

Senator SIMON. But to say that it is getting tough versus treatment and rehabilitation, I think it's a total miscasting of the situation; and I see that over and over again.

Let me use another example here. Talking about prison space, you say the demand for prison space will rise. And I'm quoting: "We must take the side of more prisons, and to polarize the issue, we must attack those by name, such as Senator Paul Simon, who take the other approach."

Incidentally, both in this memorandum and in your Philadelphia speech and in other events, you have been giving me some publicity. I only wish you had started a little earlier in the year.

I do not know that I have ever suggested that we do not need more prisons. I have suggested that we ought to be working in rehabilitation. And I do not know that that really ought to be contrary to what the Justice Department stands for. Any reflections or reaction?

Mr. **Reynolds**. Well, I don't think we have a disagreement on rehabilitation. The reference there is really prompted by a statement attributed to you that suggested that instead of spending money on more prisons, we should be spending it on unemployment. And it seems to me that that misperceives what is a real need out there to pay attention to the fact that we have a very, very real crisis in terms of the prison space in this country.

I think in the Federal sector now we have between 44,000 and 45,000 prisoners, and we have space for one-half of them. We are underspaced in the Federal sector by an amazing amount, and we are going to in 1992 be at a point where we can't take care of two-thirds of our prisoners that are coming through the system.

We have got a situation where we have a drug problem that is unbelievable, and everybody is being turned right through the turnstile and back in the streets, because nobody has any prison space to put the people who are pushing and using drugs in prison in response to convictions.

It seems to me that it has been too long blinking at the reality that we have too little prison space in this country, and there has been no attention that seems to be given to the need to spend large amounts of money on prisons in order to deal with the existing situation.

I think that the lack of prison space exacerbates the drug problem in a major way. What prompted the reference to you in that instance was your comment that you felt instead of spending money on prisons, we ought to spend the money on unemployment. I don't agree with that particular statement.

Senator **Simon**. You head the Civil Rights Division. You have to be aware that the unemployment rate among blacks, among Hispanics, among minority groups is very, very high.

Mr. **Reynolds**. It's lower now than it was in 1980, but it's a high rate.

Senator **Simon**. Well, I won't go into that now. We have some phony statistics wandering around this country right now. But it is that lack of sensitivity—I do not know where that prison statement emerged from, but there is no question if we do not do more on the employment front, we are going to have to build a lot more prisons.

Mr. **Reynolds**. But not to the exclusion of not spending money on prisons.

Senator **Simon**. I am not suggesting that.

Mr. **Reynolds**. That is the same kind of statement that you were suggesting that I had made on the soft on drugs versus hard on drugs.

I have no problem with the idea that we have scarce resources and we have to allocate them carefully and seriously, and that some of that allocation can certainly go in the direction of the problem to deal with the unemployment concerns in this country. But I have a real problem when none of the money seems to be going in the direction of dealing with the crisis we have in our prison system; and I don't think that we ought to rest on the proposition that because we have a concern in this country of unemployment that we are going to ignore the equally grave concern we have with the lack of prison space throughout this country.

Senator SIMON. Then if I may shift to your Philadelphia speech. I read that you described the hearings on Judge Bork as nothing less than an arrogant disdain for Government of the people. You refer to it as an inquisition.

At yet those same hearings, I read Senator Simpson commending the Chair, Senator Biden, saying: You have tried to be fair in a very difficult situation.

I read where, I remember these words from my colleague, Senator Thurmond, who said to Joe Biden at the conclusion of the testimony: "I stated, Mr. Chairman, that you had conducted this hearing in a fair and reasonable and a just manner. I wish to reiterate that now in the presence of those who are here."

Mr. Reynolds, do you really think we conducted an inquisition?

Senator THURMOND. Mr. Chairman, I have no objection to you asking that question, but you are opening the field now to other things, and I expect to go into other things if you are going to do that.

Senator SIMON. All right. Well, I want to proceed on this, and you will have your 10 minutes, Senator Thurmond, where I'll let you get into whatever you want to get into.

Mr. REYNOLDS. let me just say, Senator, that I don't think that the Bork hearings were this committee's finest hour. I think that it was handled in a way that showed to the country that a number of Senators had a litmus test that they were applying on a result-oriented basis, based mainly on political views; and it was an effort to use an awful lot of misinformation and mischaracterization of a fine man in order to paint him in a way that he was not, and it's too bad that the country saw it in all its imperfections.

Senator SIMON. My time has expired. I will return a little later. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Reynolds, you have requested an authorization of approximately $26 million for the Civil Rights Division. If you fail to receive sufficient funding, what impact will this have on your Division's ability to enforce our Nation's civil rights laws?

Mr. REYNOLDS. Senator Thurmond, let me say that we are, as I think every other component of Government is, working with a budget that is very skimpy in terms of covering all the things that we have to cover in order to be effective in our enforcement effort.

We have asked this Congress and this committee for an appropriation that will allow us to continue our work as we have been, in a vigorous manner, and I think that it is sufficient to allow us to do that. But if there is any cut in this request, we are going to be strained to be able to cover all the bases as effectively as we have been; and I would hope that the committee would not see fit to do any pruning.

Senator THURMOND. As head of the Civil Rights Division, are you still of the opinion that magnet schools, school plans, boundary adjustments and other educational incentives are much more desirable and effective alternatives to achieve successful desegregation in our public school system? Would you please explain and contrast.

Mr. **Reynolds**. Yes, Senator, I would have to say that the magnet school initiative that we started has been something that has been probably one of the—will go down as one of the great successes and initiatives launched in this administration.

It has worked to achieve what I will call positive desegregation; attracting students back into the public school system who had left. We have long lines now that wait for days at the time of signup for enrollment in school district after school district in order to allow for students to get the kind of quality education that these magnet school programs allow them to have.

We are putting them in strategically placed locations in what are the largely minority areas of the school districts, and attracting large numbers of whites to those areas; and I think it is improving the education component immensely and at the same time it is achieving a far greater degree of desegregation than the busing experiment that tended to have whites flee the public school system and leave us with predominantly one race public school systems.

So I think it has been something that has been an exciting, innovative effort that we launched. It has been a success and I think it is going to be a greater success. We are working now with some new kinds of techniques in the telecommunications area that can bring far greater educational programs to these schools, and I think that when that takes hold that you are going to see this kind of a program put in place across the country.

Senator **Thurmond**. Mr. Reynolds, it is my understanding that there are school desegregation orders involving over 350 school districts. Has it been your experience that the majority of school boards are acting in good faith to address concerns of educational opportunities?

Mr. **Reynolds**. I think the majority of the school boards are certainly acting in good faith to achieve the desegregation mandate, and my sense is that most of them are at the point of having accomplished that under the many court orders that there are.

I think that we are facing in many parts of the country some constraints on their ability to move to the magnet school component, or an educational component, because the cost of crosstown busing has eaten up all the resources and revenues that are available for these school systems.

One of the things that we are interested in doing, is seeking to return, where appropriate, school systems that are under court order back to the school authorities so that they can indeed treat with the educational component as part of the positive desegregation effort.

Senator **Thurmond**. Mr. Reynolds, are modified court order desegregation plans and consent decrees now the norm rather than protracted litigation?

Mr. **Reynolds**. I think that it is fair to say that certainly in terms of primary and secondary school systems, most of the disputes in the area are being resolved by modified decree or consent decree kind of resolutions.

We do have a number of higher education cases that are in the process, that are in litigation, and I think that probably it will be fair to say that in the higher education area, the extended litigation is still with us, and that's one of the reasons we need the resources that we've asked for for the next fiscal year.

Senator THURMOND. Mr. Reynolds, generally explain where the Civil Rights Division has seen its major accomplishments and disappointments.

Mr. REYNOLDS. Well, I think the major accomplishments I catalogued at the outset in what I had gone through as the opening statement.

Senator THURMOND. Is there anything in addition to that?

Mr. REYNOLDS. I think those are the major accomplishments that we can point to, and I think that really covers a wide variety of the activity that we have been involved in. The disappointments are the ones that all of us have who work in this area. There are always more to be done. There is discrimination out there that we still are challenging, and we are not yet at the point where any of us can declare victory, and until we are, I think we are all going to suffer the same degree of disappointment.

Senator THURMOND. Mr. Reynolds, racial violence is a particularly egregious form of a criminal offense. Would you say there has been a resurgence of activity by various hate groups, and has your Division been successful in prosecuting these crimes?

Mr. REYNOLDS. Well, we have, I think, been extraordinarily successful in going after the activities of the hate groups. I think that is the case about 2 or 3 years ago that those groups were engaged in some fairly violent activity. We went after them, and I know we have had successful prosecutions and convictions that have all but decimated their ranks. So I am quite encouraged by that.

I think now we certainly are not seeing the same degree of activity by that group, and I think that the racial violence upturn of a couple of years ago is on its way down. What we're seeing now unfortunately are violence of a different kind associated with the drug problems in this country and the gang wars that we're seeing on the West Coast and then in some other places in the country which are not racially inspired, but rather inspired by other reasons.

Senator THURMOND. Mr. Reynolds, pursuant to a request from this committee, you have supplied information regarding objections under section 2 of the Voting Rights Act. Please explain in more detail how these decisions are made within your Division.

Mr. REYNOLDS. Well, Senator, generally the Division has responsibility before any change in voting practice or procedure to go into place to examine it to see if it has a discriminatory purpose or it is retrogressive in its impact on minority voters; that is, that it slides backward or puts them in a worse position than they were before.

That is required under section 5, and we conduct our preclearance activity in accordance with that provision. With the amendment in 1982 to the Voting Rights Act section 2, we also have to look to see whether or not a particular change, if it went into place, would have a discriminatory result.

If we are satisfied that if indeed a change that is submitted to us would, when it went into effect, have that kind of result, then we would not be in a position to preclear it in view of the amendment to the Voting Rights Act in 1982.

Senator **Thurmond**. My next question is on preclearance, but I think you have answered it.

Mr. Reynolds, you have requested additional workforce in the Voting Rights section. How would this additional personnel be utilized?

Mr. **Reynolds**. Well, I think it's going to be utilized both in the section 5 area—this year so far we have received—thus far, we have received some 4,000 voting changes that we have to pass on for preclearance, and if it keeps going at that rate, it's going to be more than we have ever had before, maybe even in the range of 9,000 or 10,000; and we've got the census coming up in 1990.

I think that to do the review where we need to of those submitted changes, we need resources; and then there is the amended section 2 in the litigation activity that is generated under that new provision and that is keeping us occupied on the litigation front, so it's necessary, in our estimation, to have the increase that we have asked for.

Senator **Thurmond**. I believe my time is up, Mr. Chairman.

Senator **Simon**. Yes. Senator Kennedy.

Senator **Kennedy**. Thank you, Mr. Chairman.

One of the Civil Rights Division's proudest accomplishments in the last 45 years has been its valiant efforts to end legal segregation in our Nation's schools and those efforts have resulted in literally hundreds of court decrees around the country which bar school districts from further discrimination which require affirmative efforts to eradicate the lingering effects of past official discrimination.

Recently the Civil Rights Division has embarked on a very troubling effort to roll back those school desegregation decrees, and I'd like to question you about those efforts.

First, I want to describe the procedure in which those efforts were made, because I think it illustrates quite vividly this administration's divisive—or to use your own word, "polarizing" approach to civil rights.

In the Georgia school desegregation cases, the Justice Department filed suit in 1969 against all the school districts in the State, and a class representing all the black children in the State intervened in the action. In 1973, the suit was split into approximately 80 individual cases for each of the various school districts.

Then during the early 1970's, permanent injunctions were entered in these actions. The cases have largely been inactive since the late 1970's, as the school districts have sought to implement the decrees.

Then on February 3rd of this year, the Civil Rights Division filed in court documents captioned: Joint Stipulation of Dismissal, in eight of these cases. The so-called joint stipulations were signed by the Justice Department and counsel for certain school boards, but there was only a blank line for the signatures of the intervening plaintiffs.

Now the Justice Department did not attempt to obtain the signature of counsel for the black school children, or even to notify them about the so-called joint stipulations until they were filed with the court. That action was flatly inconsistent with rule 41A of the Federal Rules of Civil Procedure, which provides that the stipulations must be signed by "all parties who have appeared in the action."

Some 3 weeks later, after counsel for the black school children protested, the Justice Department filed a motion to have those so-called stipulations approved by the court. The Justice Department did not file a single affidavit or memorandum in support of its motion, in violation of the local rules, but instead suggested that the black school children be given 30 days to show cause why the orders should not be vacated and that a hearing be set as expeditiously as possible.

The Civil Rights Division subsequently indicated its intention to seek the dismissal of more than 80 school desegregation cases in Georgia, and of the many cases pending in adjoining States as well; about 200 cases.

Now, Mr. Reynolds, is it a fact that the Justice Department had not received a single complaint from any of the school boards about these decrees?

Mr. **Reynolds**. Senator, let me first correct your factual dissertation, because it seems to me that there is a gap there that someone failed to fill in for you.

After these decrees had been in place for some period of time, indeed the matter was taken back to court in the mid-1970's on the ones that we moved on, and the court ordered that all of these jurisdictions in question had received, had achieved unitary status that the vestiges of discrimination had been removed, and entered an order saying that the decrees were dismissed; that the cases were dismissed, these matters were placed on the inactive docket in the court's files and that they would have from then on, that these districts were, by virtue of their compliance with the court order, were indeed going to be out from under, except that there would be, as agreed by all the parties, a continuing injunction to abide by the law and not do that which the law prohibits you from doing.

So that they were in that posture, and there were no complaints from that point forward for about 10 to 12 years, depending on which one of these cases you look at, where indeed all that we had hoped to achieve in the 1970's in these districts had been achieved; they had become unitary; they had removed all the vestiges; they had had the court's blessing and declaration of the same, the same effect, and the court had retained them on an inactive docket and there were no complaints.

We went to the school districts at that point and said that it's time to remove these cases from the inactive docket and return them to the school systems so that we could have the educational process back in the hands of the educators; and we took the appropriate steps to file in court the stipulations that would be necessary to do that, and to serve notice on the plaintiffs' counsel, so that they could have an opportunity to speak to it if they had a reason to object.

Senator **Kennedy**. Well, as I understand, the Justice Department has conceded in its court papers that the school districts have not been declared to have attained the unitary status, and it's clear that the burden of proving the unitary status rests on the party seeking to get out from under the decree.

Mr. **Reynolds**. Actually, I think that most of these, that we went forward in the first—I think all of them had received an order from the court that they were unitary.

Senator **Kennedy**. No; unitary status, the difference which you understand very clearly.

Mr. **Reynolds**. No, I believe the confusion is on your part. They had been declared unitary, and——

Senator **Kennedy**. We can read the citations on it, the drawing of the distinction. But the point is that I have asked that the joint stipulation of dismissal documents be included in the record, Mr. Chairman, that shows the blank place for the attorney for the private plaintiffs and also the requirement of rule 41, which indicates, by filing a stipulation designed by all parties who have appeared in the action.

I gather from my earlier statement to Mr. Reynolds, that the answer is no, you had no complaints from any of the school districts; is that correct? That was the question.

Mr. **Reynolds**. I'm not aware of complaints, but this was handled by the lawyers in the Division, and——

Senator **Kennedy**. Well, then, you don't know of any is your answer. You don't know of any.

Mr. **Reynolds**. At the time we went to the school districts?

Senator **Kennedy**. Yes.

Mr. **Reynolds**. We did not know—I'm not aware that we had any complaints, although that I think that we checked with the Department of Education, and on some of them there had been complaints lodged relating to handicapped discrimination concerns in one or two of the districts, and there may have been one district where there were some. We heard that there were——

Senator **Kennedy**. Did this concern complaints from the school boards? Did you have any complaints from any of the school boards. That is the question. What is the answer?

Mr. **Reynolds**. What kind of complaints do you mean?

Senator **Kennedy**. Any complaints. I'll read you your own answer in response to the question: That we did not receive any communications from school districts prior to filing the stipulations of dismissal. It has been our general experience the school districts have achieved unitary status would prefer to have their cases dismissed.

No complaints. That is your response.

Mr. **Reynolds**. No complaints what?

Senator **Kennedy**. In any of the cases that were brought up. The question was, describe any communications to the Department since January 20, 1981 by any of the defendants or any other individual expressing complaints, dissatisfactions, or unhappiness with the permanent injunctions filed in these cases.

I don't know why it's difficult, I'll just put in——

Mr. **Reynolds**. No, I mean I——

Senator **Kennedy**. Mr. Chairman, I'll put in what the question was; and what your answer was when you wrote it.

Mr. **Reynolds**. Is that D?

Senator **Kennedy**. Yes.

Mr. **Reynolds**. I stand by that answer, absolutely.

Senator **Kennedy**. Will you read the first sentence, then?

Mr. **Reynolds**. We did not receive any communications from the school districts prior to the filing of the stipulations of dismissal. It has been our general experience the school districts which have achieved unitary status would prefer to have their cases dismissed, and the districts were quite receptive when we contacted them.

That's an accurate statement.

Senator **Kennedy**. Well, then, you didn't receive the complaints.

Now, isn't it also true that four of the eight school boards in the cases where the so-called joint stipulation was filed have indicated that they want to withdraw from the stipulations, since they are content to live with the decrees?

Mr. **Reynolds**. I think four have said that they would prefer to——

Senator **Kennedy**. I don't know why it's difficult.

Mr. **Reynolds** [continuing]. Withdraw if it was going to result in extended litigation. They have been served by the interrogatories by the plaintiffs asking them to go back 17 years and catalog student enrollments and everything else that might have occurred over that period of time; and there are four of them that have indicated that the cost and disruption that would be caused by having to comply with that was such that they would prefer to go ahead and withdraw from this at this time. I think that's correct.

Senator **Kennedy**. So four indicated that they wanted to withdraw from the stipulations; and I put in, Mr. Chairman, the case involving the Macon County Board of Education, which has a statement in paragraph 4, that: The defendant has no objection to continuing of the case and the order of the court, is willing to continue to operate under the order in this case.

Two more of the eight have sought to withdraw on the ground that the stipulations were filed in the wrong court; is that correct?

Mr. **Reynolds**. That may be so; yes. I believe that's what we say here.

Senator **Kennedy**. Well, it doesn't sound to me like the school districts think these decrees are all that burdensome.

Mr. Chairman, we have the situation where the Civil Rights Division filed stipulations of dismissal without the consent of all the parties; didn't make any real effort to find out from whom those who would know if there had been continuing acts of discrimination; and had devoted the resources that could have been used to protect civil rights to stirring up needless trouble in cases that have been operating without complaint for many of the defendants.

I understand my time is up.

[Joint Stipulation of Dismissal documents follow:]

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISON

UNITED STATES OF AMERICA,)
Plaintiff,)
CHARLIE RIDLEY, et al.,) CIVIL ACTION NO. 12972
Plaintiff-Intervenor,)
v.)
STATE OF GEORGIA, et al.,)
Defendants.)

JOINT STIPULATION OF DISMISSAL

In 1969 the Court ordered the McDuffie County School District to implement a desegregation plan designed to institute a unitary school system. On January 24, 1974 the Court found the district to be a unitary school system, dissolved the prior detailed desegregation orders, entered a permanent injunction enjoining defendants from operating a dual system, and placed this case on the Court's inactive docket subject to being reactivated upon proper application by any party or on the Court's motion.

The parties by and through counsel agree that defendants have fully implemented and complied with all orders of this Court and have not engaged in unconstitutional conduct since entry of the 1969 order, that the McDuffie County School District has achieved and maintained a unitary status in all respects for several years, and that the judgment of this Court has been fully satisfied.

The defendants agree that in the future that they shall continue to operate their school system in conformity with the United States Constitution and Federal law. In accordance with this policy, the defendants agree that they shall not intentionally discriminate against students and faculty on the basis of race, color, or national origin, including actions taken and decisions made with regard to policies involving employment of faculty and staff, transportation of students, student transfers, and school construction. Any aggrieved person may, of course, file a new suit, notwithstanding this consent decree, if the Board violates its commitments in this paragraph by intentionally discriminating on the basis of race in its administration of the school system.

Accordingly, the parties conclude that the general injunction imposed in 1969 should be dissolved and that termination of all jurisdiction and dismissal of this cause of action, as it applies to the McDuffie County School District, is appropriate at this time.

Attorney for ~~United~~ States

Attorney for Defendants

Attorney for Private Plaintiffs

Approved this _____ day of _________ 1987.

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISON

UNITED STATES OF AMERICA,)
Plaintiff,)
CHARLIE RIDLEY, et al.,) CIVIL ACTION NO. 12972
Plaintiff-Intervenor,)
v.)
STATE OF GEORGIA, et al.,)
Defendants.)

JUDGMENT AND ORDER

The parties have submitted a Joint Stipulation of Dismissal which this Court has approved. In view of this submission, it is appropriate that the above captioned case should be closed.

Accordingly, the Court finds that there is no just reason for delay in the entry of final judgment terminating this case against the defendants and the Court therefore expressly orders that such judgment be entered in this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT the McDuffie County School District has achieved and maintained a unitary status for several years, that the judgment of the Court has been fully satisfied, that orders and injunctions heretofore ordered by this Court are dissolved, that all jurisdiction over this matter is completely terminated and that this case as it applies to the McDuffie County School District is closed and dismissed.

Entered this _______ day of ____________, 1987.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of February, 1988, I served copies of the foregoing Joint Stipulation of Dismissal and Proposed Order on the persons named below by depositing copies of said documents in the United States Mail, postage prepaid to:

Norman Chackin
NAACP-Legal Defense and Education Fund
99 Hudson Street, 16th Floor
New York City, New York 10013

Elizabeth Rindskopf
Moore, Alexander and Rindskopf
Suite 2030
1154 Citizens Trust Bank Building
Atlanta, Georgia 30303

Michael J. Bowers
Attorney General
State of Georgia
132 State Judicial Building
Atlanta, Georgia 30334

NATHANIEL DOUGLAS
Attorney
Department of Justice
Washington, D.C. 20530

Office of the Attorney General
Washington, D.C. 20530

22 February 1988

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Wm. Bradford Reynolds WBR
Assistant Attorney General and
Counselor to the Attorney General

Pursuant to the discussion at Thursday's General Management meeting concerning Department strategy for the remainder of the administration, I am attaching a statement of themes for your review. Please give consideration to ways in which your activities can highlight and reinforce these themes, and direct comments or questions to me.

A STRATEGY FOR THE REMAINING MONTHS

Here is a statement of theme:

"Particularly as the "baby boom" generation becomes a generation of young parents, Americans today are paying more and more attention to the quality of life in their communities. And almost every major issue they must deal with -- such as drugs, obscenity and AIDS -- involves public health or public safety or both. It is time we directed our efforts toward improving the public health and safety of our communities."

In pushing this theme, it is necessary that we state clearly and often the character of the various issues -- i.e., that they are public health or safety issues. We must define them as such, and insist on the definition, in order to keep the debate on our terms. In addition, we must polarize the debate. We must not seek "consensus," we must confront. Of course, we must confront sensibly, in ways designed to win the debate and further our agenda. What follows is an issue-by-issue analysis that where possible proposes means of polarization.

Drugs. Overall, we should send the message that there are two ways to approach drugs: the soft, easy way that emphasizes drug treatment and rehabilitation versus the hard, tough approach that emphasizes strong law enforcement measures and drug testing. Naturally, we favor the latter.

To show our seriousness, we should develop and implement a law enforcement strategy that would prosecute users under provisions enacted in the 1986 legislation, and we should continue to implement drug testing in the Department and the executive branch generally, while defending drug testing in the courts. The tough approach would excite the drug libertarians who say drugs should be a matter of private choice; this in turn would allow us to show how such a view threatens public safety and public health, and that only our approach can secure these important goals.

Also, and consistent with the tough approach, we should focus on the need for localities to spend more on drug enforcement (and also to prosecute drug users). Currently, local law enforcement agencies are spending only two to three percent annually on drugs. They must step that up, and prosecute more drug cases. Otherwise the federal government will be less effective in its central mission: national and international drug law enforcement. The Attorney General could announce a "pledge campaign," asking local law enforcement agencies (or local governments) to increase their drug spending by a certain (reasonably attainable) percentage. By the day of the announcement, we should have lined up "pledges" from several major cities, such as Los Angeles, Houston, and New York.

Obscenity. Here we must continue our focus on child pornography and obscenity and stress that these phenomena threaten the psychological health and physical safety of our children. The "combat zones" of our cities are service stations of the vice industry, magnets for pimps, prostitutes and drug dealers and staging grounds for street crime and violence. We must attack the idea that those trafficking in obscenity have a right to practice their trade. This is not an issue of rights but -- again -- one of public health and safety. We should aggressively push our new legislative package, stressing the child pornography portions and the forfeiture provisions. And we should encourage use of not only the obscenity statutes, but also public health statutes, building codes, public nuisance laws, and health and safety codes and liquor license rules.

AIDS. Here the point is that AIDS is not a civil rights or privacy issue, but one of public health and safety. While care must be taken to protect civil rights, we must take appropriately designed measures to protect communities against the threats posed by AIDS. We should make periodic reports on our four-point AIDS program (announced in the summer), and on any defensive litigation that holds off the privacy advocates who challenge AIDS testing.

Career Criminals. Repeat offenders are plainly a major threat to public safety. We should launch an offensive against career criminals based on the Armed Career Criminal Act and the Anti-Drug Abuse Act of 1986. The former provides a 15-year mandatory sentence, with no parole, for a defendant with three or more prior convictions for robbery or burglary, when the current offense involves possession of a firearm. The latter prescribes a mandatory minimum 10-year or 20-year sentence with a maximum of life imprisonment for drug traffickers with prior drug-related felony convictions. U.S. Attorneys again should be directed to focus on career criminals and ask for these sentences. When such sentences are handed down, we should advertise them -- through press releases and press conferences.

Prisons. Our federal system is overcrowded by a rate of 58 percent system-wide. The inmate population is growing at an average rate of 15 percent a year. The Department estimates that given current capacity and with only the additions envisioned by the administration's current plan, overcrowding will increase to at least 72 percent by 1997. The demand for prison space thus will rise, but so will the voices of those who say we need fewer prisons and more "alternatives" to incarceration. We must take the side of more prisons, and to polarize the issue we must attack those by name (such as Sen. Paul Simon) who take the other approach. We must stress why prisons are necessary by discussing retribution, deterrence, and incapacitation. Overall, of course, we must make the case that public safety demands more prisons.

Truth in the Courtroom. Here the point is to associate the search for truth with protecting public safety. The two go hand in hand. If you're against exclusionary rule reform, or Miranda reform, you're against truth in the courtroom, and you're against public safety. The issues should be defined in these broad terms, leaving the technical debates for brief writers and legislators. The purpose is to put the other side on the defensive.

Capital punishment. Here, too, we must associate capital punishment with public safety, with rationales for the death penalty being those of deterrence, retribution, and incapacitation (i.e., decapitation). We must drive home the point that to be against the death penalty is to deprive communities of an important shield against the most vicious criminals. The means for discussing capital punishment is our legislation.

Victims of Crime. Again, there is an association between victims and public safety: if you aren't concerned about and willing to support victims of crime, you don't really care about public safety. We should advertise the developments since 1982 in the states in respect to legislation mandating fair treatment of crime victims. Also, we should attack (here *is* confrontation) the Supreme Court decision last year in *Booth* v. *Maryland*, which denied the use of victim impact statements in only capital cases. And we should discuss the projects of our relatively new Office for Victims of Crime.

EDWARD M KENNEDY MASSACHUSETTS
ROBERT C BYRD WEST VIRGINIA
HOWARD M METZENBAUM OHIO
DENNIS DECONCINI ARIZONA
PATRICK J LEAHY VERMONT
HOWELL HEFLIN ALABAMA
PAUL SIMON ILLINOIS

STROM THURMOND SOUTH CAROLINA
ORRIN G HATCH UTAH
ALAN K SIMPSON WYOMING
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R J DUKE SHORT MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

May 19, 1988

The Honorable William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
Justice Department
Washington, D.C. 20530

Dear Mr. Reynolds:

As you know, Chairman Biden is out of the office due to illness. In his absence, I am forwarding a request for documents and information, which the Judiciary Committee needs prior to your testimony at the committee's May 26 oversight hearing on the Civil Rights Division.

The committee would appreciate receiving the requested answers and documents by close of business on Tuesday, May 24 so that committee members may adequately prepare for this hearing.

Thank you for your cooperation.

Sincerely,

Mark Gitenstein

Mark H. Gitenstein
Chief Counsel

QUESTIONS FOR ASSISTANT ATTORNEY GENERAL WILLIAM BRADFORD REYNOLDS

1. With regard to U.S. v. Georgia, Civ. No. 2771 (M.D. Ga.), and the related school desegregation cases pending in other districts in Georgia, please:

a. State the policy of the Justice Department concerning the circumstances in which it is appropriate to seek modification or rescission of a permanent injunction;

b. Give examples of previous instances of the application of this policy;

c. Describe any communications between department personnel and counsel for the intervening plaintiffs, prior to the filing of the "Stipulations of Dismissal," regarding the department's decision to file the stipulations;

d. Describe any communications to the department since January 20, 1981, by any of the defendants or any other individual expressing complaints, dissatisfaction or unhappiness with the permanent injunctions filed in these cases;

e. Describe the process used by the department in reaching the decision to file the stipulations, including any investigation or factual analysis conducted or prepared by the Department;

f. Describe any complaints of discrimination against any of the defendants made to any federal or state agency or department since 1981 of which the division is aware; and

g. Provide copies of all documents recommending or considering whether or not to file the dtipulations.

2. Please identify any instances in which the department has issued an objection to a proposed change covered by the Voting Rights Act on the ground that it violates the so-called results test set forth in Section 2 of the act, as amended.

3. With respect to the Division's inquiry into voter registration challenges in Louisiana in 1986, please:

a. Describe fully your reasons for declining to request an FBI investigation to determine whether the challenges constituted a criminal violation of the Voting Rights Act and 42 U.S.C. 1971; and

b. Identify any communications between division personnel and officers or employees of the Republican National Committee or the Republican Party referring or relating to the inquiry, state the date of such communication, identify all persons present or participating in such communication, and provide the committee with any documents (not already provided to the committee) referring or relating to such communication.

4. Please supply the committee with the most current statistics available updating those contained in the Division's publication entitled "Civil Rights Division -- Enforcing the Law, January 29, 1981 - January 31, 1987."

5. With regard to your work activities since you were appointed Counselor to the Attorney General in 1987, please:

a. Estimate the total percentage of your work time devoted to activities other than those that are within the responsibilities of the Assistant Attorney General for the Civil Rights Division;

b. List the 10 matters not within the responsibilities of the Assistant Attorney General for the Civil Rights Division on which you have devoted the greatest amount of your work time;

c. Identify and briefly describe all department matters not within the responsibilities of the Assistant Attorney General for the Civil Rights Division over which you have exercised any supervisory authority; and

d. Identify all formal or informal committees, task forces or working groups on which you have participated, and briefly describe your role on each.

6. Please list all cases in which you have personally appeared on behalf of the United States since January 1987, and provide copies of the briefs or memoranda filed by the United States in such cases.

GUIDELINES

The following guidelines apply for the documents requested in the questions set forth above:

1. As used herein, "document" means the original (or an additional copy when an original is not available) and each distribution copy of writings or other graphic material, whether inscribed by hand or by mechanical, electronic, photographic or other means, including without limitation correspondence, memoranda, publications, articles, transcripts, diaries, telephone logs, message sheets, records, voice recordings, tapes, film, dictabelts and other data compilations from which information can be obtained. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

2. In the event that any requested document has been destroyed or discarded or otherwise disposed of, please identify the document as completely as possible, including without limitation the date, author(s), addressee(s), recipients(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.

3. If a claim is made that any requested document is not required to be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each document.

May 25, 1988

Mark H. Gitenstein, Esquire
Chief Counsel
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mark:

This responds to your letter of May 19, 1988, to Wm. Bradford Reynolds, Assistant Attorney General for Civil Rights, requesting that certain documents and information be provided to the Judiciary Committee by close of business yesterday prior to Mr. Reynolds's testimony scheduled for May 26. The information and documentation that you requested is attached.

Pursuant to an oral request from Committee Staff on May 24, we are also including copies of Mr. Reynolds's speeches since the last authorization hearing in March, 1987.

We regret any inconvience this delivery may cause the Committee. Had we known about your request earlier, especially in light of the fact that the hearing has been scheduled for well over a month, we would have been better able to respond in a timely fashion. However, we have acted as swiftly as possible under the circumstances. Mr. Reynolds, for example, was out of the Department at conferences on Friday, and again Monday and Tuesday until mid-afternoon, and had not had an opportunity to review the material being provided until his return.

We hope that the attached responds fully to your request. If you have any further questions please do not hesitate to contact me.

Sincerely,

Tom

Thomas M. Boyd
Acting Assistant Attorney General

cc: Honorable Strom Thurmond

Enclosures

RESPONSE TO QUESTIONS AND REQUEST FOR INFORMATION FOR ASSISTANT ATTORNEY GENERAL WM. BRADFORD REYNOLDS

1. a. In general, we believe that, once a school district has achieved "unitary" status -- i.e., has eliminated all vestiges of illegal segregation -- dismissal of the case is appropriate. Obviously, there is no cut-and-dried correct way to tell when a given district has achieved unitary status; the inquiry must be made on a case-by-case basis. Let me describe in some detail, however, why we believe the districts in United States v. Georgia are likely candidates.

The Department's docket of education cases consists of several hundred cases which are nearly 20 years old. In Georgia, for example, our suit was originally filed on August 1, 1969 against the State of Georgia and 81 public school districts. The case is styled United States v. State of Georgia, et al., C.A. No. 12972 (N.D. Ga.). The Court entered a number of orders for the purpose of effecting desegregation in the named school districts, including a detailed regulatory injunction entered on December 17, 1969. On September 5, 1972, in compliance with directions given by the United States Court of Appeals for the Fifth Circuit, the Northern District issued an order adding as parties defendant each school district in the state and transferred over 47 of the public school districts involved in this case to the district court for the Middle District; the remainder of the school districts were transferred to the other two judicial districts.

On December 27, 1973, the State defendants filed a motion with this Court to have the case dismissed as to the State defendants or, in the alternative, to have an order entered "placing on an inactive docket those local county and city school systems within the Middle Judicial District which by virtue of compliance with all court orders have achieved and maintained a 'unitary status'. . . ." A similar order placing specified school districts on the inactive docket had been entered by the Northern District on June 23, 1973.

This Court approved on January 24, 1974, a consent order signed by counsel for plaintiff, plaintiff-intervenors, and for defendants, which stated that the specified school districts, including all school districts named in this caption, "have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become 'unitary' in the sense required by the Supreme Court's decisions in Green v. County School Board, 391 U.S. 420 (1968), and Swann v. Board of Education, 402 U.S. 1 (1971)."

The consent order dissolved the detailed regulatory injunction issued by the Northern District on December 17, 1969, substituted a permanent injunction for each school district--setting out certain desegregative conduct requirements--and placed the named school districts on this Court's inactive docket, "subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary."

The detailed regulatory injunction against the state was also dissolved as it pertained to the school districts placed on the inactive docket and a permanent injunction was substituted. A similar order was entered in the Southern District on February 14, 1974.

Since 1974 there has been little, if any, activity in these cases. At the time these districts were reviewed by us for possible dismissal no complaints had been filed with the Department of Justice by any persons who alleged that racial discrimination was occurring in these districts. Under these facts, we believe that the school district would be entitled to a review to determine whether it has corrected the constitutional violations originally alleged by the government in its suit. If such a review reveals the district is in compliance with its orders and that the district has not engaged in any new discriminatory practices, we believe that the law is clear: court supervision should be terminated and the case should be dismissed. Thus, the Department's policy is that court supervision should terminated and a case dismissed, once a district has achieved unitary status. This means that any outstanding injunction should be dissolved.

This approach is consistent with the weight of the law, including a recent decision by Judge Acker in Lee et al., and United States and NEA v. Macon County Board of Education (N.D. Ala. 1988). We are attaching our most recent filing in the Georgia case, which outlines in greater detail the legal authority for our position. (See TAB A.)

Although one purpose of our review is to identify school districts which are eligible for dismissal, an equally important purpose is to identify districts which are not operating in compliance with their court orders. One Georgia district -- Merriwether -- initially considered was determined not to be eligible for dismissal at this time because we have received complaints against the district. We therefore reactivated the case and are now investigating the complaints.

b. As noted above, we believe that the law requires that a school case should be dismissed and the injunction dissolved once the district has achieved full unitary status. The process for getting a case dismissed has been initiated by: (1) the school district, (2) the United States, or (3) the Court. Most often the process for having a school district declared unitary (or having the case dismissed and the injunction dissolved) is initiated by the school district. However, the process is frequently initiated by the Court. For example, Judge Acker of the Northern District of Alabama recently issued a show cause order to the government and private plaintiffs regarding seven school districts and a junior college in Lee, supra. The order required the United States and the private plaintiffs to demonstrate why the case should not be "closed" (case dismissed and injunction dissolved) with respect to the seven school defendants. And as noted above Judge Acker "closed" the case with respect to Nunnelley Junior College in March 1988, after the United States and the private plaintiffs were unable to produce any evidence to show that Nunnelley was operating in noncompliance with its order.

Although the government has not usually initiated the legal process to dismiss a case, we believe the government has the obligation to do so, particularly in light of the fact that federal judges have seen the need to initiate the process where the government and the private plaintiffs have failed to do so. The law is clear that, once the dual school system has been successfully dismantled, full control of the system must be returned from the federal court to the local school board. There have been a number of cases where the government has agreed to the dismissal of school desegregation cases where the school districts involved have complied with the obligations of court orders and have sought dismissal of their cases. In the early 1980s, including prior to this administration, there were a number of cases in Alabama and some in Texas in which the school district was declared to be unitary and the case dismissed with a stipulation by the parties by which the school district agreed not to discriminate in various school operations. The case involving the Houston, Texas, school system was dismissed in a similar fashion. While these stipulations are enforceable in court, a new lawsuit would have to be filed. The dismissal of cases where the school district has moved to have the school district declared unitary and the case dismissed usually follows extensive investigation and negotiation with the school district, and dismissal is mutually agreed to in a consent order. Examples of such cases are: United States v. Board of Education of Jackson County, and the Board of Education of Jefferson City, C.A. No. 1287 (N.D. Ga.), dismissed September 1985; Lee v. Macon County Board of Education, C.A. No.5945-70-T (Dallas County, dismissed September 1983; Demopolis, dismissed December 1983); United States v. Hinds County School District, C.A. No. 4075, dismissed November 1984.

c. We did not communicate with the private plaintiffs prior to filing the stipulations in the Georgia cases.

d. We did not receive any communications from school districts prior to filing the stipulations of dismissal, but it has been our general experience that school districts which have achieved unitary status would prefer to have their cases dismissed, and the districts were quite receptive when we contacted them. We note that, in spite of this initial receptivity, some of the districts have later shown reluctance to pursue dismissal at this time because of their fear that the private plaintiffs will engage them in extensive and costly litigation. These small districts have made clear, for instance, that they do not have the necessary financial and other resources answer extensive interrogatories asking for information dating back to 17 years ago.

e. We gathered and analyzed the most recent enrollment data for an initial group of 17 Georgia school districts operating under court order where the courts had previously declared the school district to be unitary, dissolved the regulatory injunction, entered a permanent injunction, and placed the case on the court's inactive docket. These 17 school districts are the only Georgia school districts operating under these permanent injunctions for which we could obtain the most recent enrollment information from OCR. The enrollment data for these districts was taken from the Fall 1986 OCR Survey of Elementary and Secondary Schools. The enrollment for nearly every individual school in all of the districts met the legal standard (+/- 10% or 20% deviation from the districtwide racial enrollment) normally applied by the courts.

Upon reviewing this information, we then contacted the superintendents of these 17 Georgia school districts and inquired whether each district desired to have its district considered for unitary status. We later contacted the remainder of the districts named in United States v. State of Georgia. Because we did not have updated enrollment data for this second group of districts, we requested in a letter that the districts provide enrollment and employment statistics. We are still gathering enrollment and faculty data from these other districts, many of which have indicated their willingness to have their cases dismissed.

With respect to the initial group of 17, we sent letters and proposed stipulations and orders to them. Eight of them returned the signed stipulations to us which we filed in early February. Three other school districts sent the stipulations directly to the court for filing, also in February. However, two of the districts are under the jurisdiction of the southern district, so they have been withdrawn from consideration and will be filed shortly in the southern district. Three other school districts returned the signed stipulations to us, but we have not yet filed these cases, hoping that we could resolve issues related the appropriateness of the extensive interrogatories filed on other districts by the private litigants.

Since we filed the stipulations, we have met with representatives of the NAACP-Legal Defense Fund, which represents the private litigants in the United States v. Georgia case, and other civil rights groups, including the NAACP. To accommodate some of the concerns these groups have expressed, our procedures now include contacting school districts and requesting extensive data, including student enrollment, faculty and administration statistics and other indicia of compliance with court orders and notifying LDF and the NAACP upon our initial contact with a school district. We recently followed this procedure in sending letters to 23 Alabama districts.

f. As noted previously, the Justice Department has not received complaints against these Georgia districts and this is a one of the primary reasons for seeking to dismiss these cases. For the initial group of 17 Georgia districts, we did obtain information from the Department of Education, Office for Civil Rights. The information which we obtained for initial group of 17 revealed that a number of complaints had been filed against these districts since 1983, but only one resulted in an actual finding by OCR of a violation, which required a remedial plan (apparently, the school district had used invalid "ability grouping" methods that resulted in unnecessary segregation of several classrooms). A number of the complaints involved handicap issues and therefore are not covered by the operative orders in the Georgia case.

g. To the best of my recollection, several meetings were held with staff to discuss the Georgia districts and the instructions on how to proceed were oral. There are no memoranda discussing how the districts were selected and what steps were to be followed. This was done by the staff pursuant to instructions from supervisory personnel. The reason for this is that the process which we have been following is so basic: reviewing districts which have already been declared unitary, which have not been involved in any legal activity for years, and against which we have received no complaints.

2. a. The following objections were interposed under §5 on grounds inter alia that the voting changes violate §2:

(1) Copiah County, Mississippi - Redistricting of supervisor districts; objection letter dated April 11, 1983

(2) Oktibbeha County, Mississippi - Redistricting of supervisor districts; objection letter dated June 17, 1983

(3) Halifax County, North Carolina - Readoption of the existing at-large method of election and increase in the number of county commissioners from five to six; objection letter dated May 16, 1984

b. There are other instances where we did not object to a voting change under §5, but noted in the preclearance letter that it may be violative of §2:

(1) Wilson County School District (Wilson County), North Carolina - §5 letter dated July 11, 1986, advised the school board that the at-large method of electing

the board may be violative of §2; lawsuit subsequently filed. United States v. Wilson County Board of Education, No. 86-88-CIV-5 (E.D.N.C.) (filed August 22, 1986).

(2) McComb Municipal Separate School District (Pike County), Mississippi - §5 letter dated May 26, 1987, advised the school district that the apparent malapportionment of election districts established for the election of school district trustees may be violative of §2; school district subsequently rectified the malapportionment voluntarily.

(3) Town of Maytown (Jefferson County), Alabama - §5 letter dated June 1, 1987, advised the town of a possible violation of §2 with respect to an annexation that encircled two predominantly black areas, thus foreclosing these two areas from annexing to any town other than Maytown, which had allegedly refused to annex these areas. The town is presently making plans to deannex territory around the two black areas to permit annexation by the city of Birmingham.

(4) Grenada Municipal Separate School District (Grenada County), Mississippi - §5 letter dated May 9, 1988, advised that the method of selecting the school board trustees may be violative of §2 because the method appears to be out of compliance with state law. No response to this letter has been received as yet.

c. In one instance, we precleared several voting changes and noted in the preclearance letter that an existing election feature, not before us for §5 review, may be violative of §2:

> Pitt County, North Carolina - §5 letter dated July 22, 1986, advised the county commissioners that the existing method of election may be violative of §2. The county has since implemented a new election plan that was precleared on February 24, 1988.

d. Also in the course of our §5 review, we have identified §2 violations regarding elements of election plans that were not changes and thus were not before us for §5 review. As a direct result, we filed the following §2 lawsuits:

(1) United States v. City of Bessemer (N.D.Ala.) (filed April 10, 1984)

(2) United States v. City of Augusta, No. CV 187-004 (S.D.Ga.) (filed January 8, 1987)

(3) United States v. City of Roanoke, C.A. No. 87-V-97-E (M.D.Ala.) (filed February 2, 1987)

(4) United States v. City of Spartanburg, C.A. No. 7:87-1332-17 (D.S.C.) (filed May 26, 1987)

(5) United States v. Laurens County, South Carolina, No. 6-87-1817-3 (D.S.C.) (filed July 10, 1987).

(6) United States v. Bladen County Board of Education, No. 87-101-CIV-7 (E.D.N.C.) (filed October 21, 1987)

(7) United States v. Lenoir County, North Carolina, No. 87-105-CIV-4 (E.D.N.C.) (filed October 21, 1987)

(8) United States v. City of Aiken, No. 1:87-3135-6 (D.S.C.) (filed November 24, 1987).

(Examples of objection letters are attached at TAB B.)

3. a. A federal district court enjoined the voter purge efforts on September 24, 1986. The decision not to pursue the matter was based on internal deliberations, and memoranda from key staff. Copies of the internal deliberative memoranda were provided to the Committee under cover letter dated 11 December 1987, copy attached at TAB C.

b. There have been no communications, either oral or written, between division personnel and officers or employees of the Republican National Committee referring or relating to the inquiry, other than those provided to the Committee under the cover letter dated 11 December 1987, attached.

4. Information is provided in the notebook tabbed "D".

5. **NOTE: The information requested in question number 5 is outside the scope of the subject budget authorization hearing. It is being provided, however, as a courtesy to Committee staff.**

a. The time devoted to activities other than those within the responsibilities of the Assistant Attorney General for Civil Rights varies from day to day, week to week, and month to month. Accordingly, any percentage estimate is impossible to calculate. I can state that I spend whatever time it takes to accomplish the work to be done, and that a total estimate is much closer to an 80-hour work week than a 40-hour work week.

b. The matters outside the Civil Rights Division to which I have devoted a substantial amount of time include the following:

(1) Architectural and Transportation Barriers Compliance Board (ATBCB), both as Chair and as a Member;

(2) Drug-related initiatives;

(3) Justice Department Resources Board (DRB);

(4) Iran-Contra matters;

(5) Judicial confirmation process;

(6) Justice Department Strategic Planning Board (SPB);

(7) Department management-related issues;

(8) Immigration Reform Act (setting up Office of Special Counsel);

(9) Domestic Policy Council (DPC);

(10) Atlanta/Oakdale Prison uprising.

c. None.

d. The principal boards, commissions, and committees on which I have served are the following: ATBCB; Interagency Coordinating Council; DRB; SPB; DOJ Special Issues Coordinating Group. _See also_ b., _supra_.

6. a. _United States Supreme Court_:

(1) _Corporation of Presiding Bishop_ v. _Amos_, 106 S.CT. 2862 (1987)

(2) _United States_ v. _Kozminski_, No. 86-2000 (pending)

b. _United States Courts of Appeal_:

(1) _Hammon_ v. _Barry_ (District of Columbia Firefighters), 826 F.2d 73 (D.C. Cir. 1987), petition for rehearing pending

(2) _United States_ v. _Starrett City Assoc._, 840 F.2d 1096 (2d Cir. 1988)

(3) _United States_ v. _Texas Educ. Agency (Austin)_, 834 F.2d 1171 (5th Cir. 1987)

(Copies of briefs are included in the file tabbed "E".)

IN THE UNITED STATES DISTRICT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,
Plaintiffs,

CHARLIE RIDLEY, et al.,
Plaintiff-Intervenors,

v.

STATE OF GEORGIA, et al.
(Grady, Hart, Irwin, Jasper, Macon, Mitchell, Monroe, Morgan and Peach Counties),
Defendants.

CIVIL ACTION NO. 2771

RESPONSE OF THE UNITED STATES TO PLAINTIFF-INTERVENORS' MEMORANDUM IN OPPOSITION TO ENTRY OF A FINAL ORDER IN THIS CASE

The United States and defendant school districts cited above have filed stipulations of dismissal, and the United States has filed motions to have the stipulations approved, as they pertain to the named school districts. Plaintiff-intervenors have filed memoranda in opposition to this dismissal and have requested this Court to dismiss summarily the motions for the alleged failure to comply with this Circuit's requirements for determination of unitary status in a school desegregation case.[1]

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[1] Plaintiff-intervenors also seek summary dismissal because of the United States' alleged failure to comply with the Court's procedure of submitting a memorandum in support of the referenced motions. It is not clear to us if or why motions pursuant to joint stipulations such as the ones filed necessarily require such a memorandum let alone why affidavits are required where counsel for the United States and defendants have signed the joint stipulation. The United States certainly apologizes to the Court for any oversight in failing to submit memoranda in support (continued...)

For the reasons stated below, the United States opposes dismissal of the motions it has filed and believes this Court should determine whether the school districts have attained unitary status and, if so attained, then grant dismissal of their respective cases.

History of this Case

This case was originally filed on August 1, 1969, by the United States in the Northern District of Georgia against the State of Georgia and 81 public school districts and officials of the state. United States v. State of Georgia, et al., C.A. No. 12972 (N.D. Ga.). That court entered a number of orders for the purpose of effecting desegregation in the named school districts, including a detailed regulatory injunction entered on December 17, 1969. On September 5, 1972, in compliance with directions given by the United States Court of Appeals for the Fifth Circuit, the Northern District issued an order adding as parties defendant each school district in the state and transferred to this Court jurisdiction over 47 of the public school districts involved in this case.

On December 27, 1973, the State defendants filed a motion with this Court to have the case dismissed as to the State defendants or, in the alternative, to have an order entered

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[1](...continued) of the motions requesting that these cases be dismissed. We respectfully request that this responsive memorandum be considered filed in support of the motions previously filed by the United States on March 1, 1988, and March 22, 1988. And if plaintiffs dispute any fact asserted in the joint stipulation, we will prepare affidavits in support thereof, too.

"placing on an inactive docket those local county and city school systems within the Middle Judicial District which by virtue of compliance with all court orders have achieved and maintained a 'unitary status'. . . ." A similar order placing specified school districts on the inactive docket had been entered by the Northern District on June 23, 1973.

This Court approved on January 24, 1974, a consent order signed by counsel for plaintiff, for plaintiff-intervenors, and for defendants, which stated that the specified school districts, including all school districts named in this caption, "have for three years assigned students to the public schools in accordance with the plans approved by the Northern District and have become 'unitary' in the sense required by the Supreme Court's decisions in Green v. County School Board, 391 U.S. 420 (1968), and Swann v. Board of Education, 402 U.S. 1 (1971)."

The consent order dissolved the detailed regulatory injunction issued by the Northern District on December 17, 1969, substituted a permanent injunction for each school district--setting out certain desegregative conduct requirements--and placed the named school districts on this Court's inactive docket, "subject to being reactivated on proper application by any party, or on the Court's motion, should it appear that further proceedings are necessary."

The detailed regulatory injunction against the state was also dissolved as it pertained to the school districts placed on the inactive docket and a permanent injunction was substituted.

A similar order was entered in the Southern District on February 14, 1974.

To the best of our information, there has been no activity in this case as to the named school districts since that time until the filing of the recent joint stipulations of dismissal.[2]

Argument

Plaintiffs misconstrue what defendants and the United States are requesting at this point in time. We think that the law and evidence will make clear that dismissal is appropriate, but certainly believe that plaintiff-intervenors are first entitled to the opportunity offered them by the law of this circuit to show cause why such dismissal is inappropriate.

The remaining issues in these cases are therefore well defined: (1) whether these school districts have attained "unitary status" and, (2) if that status has been reached, whether it is proper to dismiss the cases.

1. Attainment of "unitary status." The United States agrees that the school districts named above have not been declared to have attained "unitary status." But clearly, as agreed to by the parties in the 1974 consent order, these school districts have been declared "unitary."

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[2] We also note that stipulations were filed for the McDuffie and Camden school districts; since these school systems are located in the Southern District of Georgia, this Court has removed the two school districts from this action. The Macon County school district has filed a motion to be withdrawn from consideration for dismissal.

The law in this circuit is that, once a school district has been declared unitary, it may attain unitary status by maintaining its unitariness for a three year period.[3] Youngblood v. Board of Public Instructing of Bay County, 448 F.2d 770 (5th Cir. 1971). All parties agreed in 1974 that the school districts named above were unitary. Thus, the school districts here are at the "stage two" juncture of the unitariness inquiry contemplated by the court in Youngblood. Plaintiff-intervenors are, therefore, at this point entitled to a hearing to "show cause why dismissal should be further delayed."[4] Id. at 771 (citation omitted). Although this Court did not establish the three year reporting requirement contemplated by the court in Youngblood, the plaintiffs have filed interrogatories which we expect to demonstrate that the defendants have satisfactorily complied with this court's order.[5]

Youngblood clearly places the burden on plaintiffs at this point to "show cause why dismissal of the case should be further delayed." 448 F.2d at 771 (citation omitted). See also Pitts v.

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[3] We think it is also possible for a district to attain "unitary status" without having been declared "unitary" three years earlier. See Lee v. Macon County Board of Education, C.A. No. 70-AR-0251-S (N.D. Ala. Mar. 18, 1988). However, this more difficult question is not presented in these cases.

[4] The United States takes no position at this time on whether this court could determine that a hearing would serve no purpose and dispose of the matter on the pleadings.

[5] The United States believes that some of the discovery requested to date is overextensive since, inter alia, a demonstration of unitariness over a three-year period should be sufficient.

Freeman, 755 F.2d at 1426 (citing *United States* v. *Texas Education Agency*, 647 F.2d 504, 509 (5th Cir. 1981) (Unit A), cert. denied, 954 U.S. 1143 (1982)); *United States* v. *Texas (San Felipe Del Rio School District)*, 509 F.2d 192, 194 (5th Cir. 1975) (*Youngblood* "enunciated guidelines by which, *in the absence of a contrary showing after notice*, the District Court could with confidence close the books on a school desegregation case") (emphasis added). Cf. *Adams* v. *Board of Pub. Educ.*, 770 F.2d 1562, 1565 (11th Cir. 1985) (affirming 585 F. Supp. 215 (M.D. Ga. 1984) (Owens, C.J.)) ("[Plaintiffs] had the burden of showing that this [new] board plan did violence to the unitary school system established by the prior [consent] decree"). This is especially appropriate in cases like these, where no party has raised any complaint for over a decade. See *Lee* v. *Macon City Board of Education*, No. 70-AR-0251-S (N.D. Ala. Mar. 18, 1988), slip op. 18-21 (citing *Pearson* v. *Calhoun County, Alabama*, No. CV 78-H-1026-E (N.D. Ala. Oct. 2, 1985)).

We think that plaintiffs can carry this burden by showing *that the school districts have failed satisfactorily to comply with the Court's orders, or that they have committed new acts of intentional discrimination*. The requirement that plaintiffs show one of these two violations is consistent with *Youngblood* itself, of course, since that decision clearly did not contemplate a de novo inquiry into the successfulness of the district's efforts to desegregate. Such an inquiry would have been inconsistent with a prior determination of unitariness and placing the burden of producing evidence on plaintiffs. Rather, it is clear that Youngblood considered this inquiry to have been successfully concluded at "stage one." The inquiry at "stage two" would focus simply on compliance: what the school district is required affirmatively to do under Youngblood is send in periodic reports, presumably so that compliance can be checked.

The focus on compliance with a valid court order is also consistent with the Supreme Court's decision, after Youngblood, in Pasadena Board of Education v. Spangler, 417 U.S. 424 (1976), which held that a district court lacked the authority to "fine-tune" such a court order once it had been put in place and implemented. See also Adams v. Board of Pub. Educ., 770 F.2d at 1564 (quoting and affirming this Court's ruling that "The settlement agreement and resulting decree eliminated possible further integration of [defendant school board's] elementary schools as an issue in this lawsuit. ...[The school board's actions] are to be examined to determine whether or not ...[they] are fair and suitable to all who are [a]ffected and whether or not they are consistent with the settlement decree of 1978") (emphasis is original)).

Failure to maintain a particular racial balance, of course, does not in itself prove a failure to comply or new discrimination. See Pasadena Board of Education v. Spangler, 427 U.S. at 435-436 (1976); Milliken v. Bradley, 418 U.S. 717, 740-741 (1974); Wright v. Council of City of Emporia, 407 U.S. 451, 464 (1972); Swann v. Charlotte-Mecklenburg Board of

Education, 402 U.S. 1, 24, 31-32 (1971). That information can, however, be evidence of such a failure or such discrimination, and make it appropriate for defendants to produce any evidence they may have disputing that such an imbalance exists, or demonstrating that the imbalance is not a result of a failure to comply or new discrimination, or showing independently that they have complied with the order and committed no new acts of discrimination.

The approach outlined above was followed in a recent decision by another district court in this circuit. In a similar situation in the Northern District of Alabama, in late 1987 Judge William Acker issued an order to show cause as to why several public school districts and junior colleges in Lee v. Macon County Board of Education, C.A. No. 70-AR-0251-S (N.D. Ala.), should not be dismissed. A copy of the court's March 18, 1988 opinion is attached; it includes a detailed discussion of the difference between "unitary" and "unitary status" and the court's role once "unitary status" is attained. Pleadings are still being filed by the parties and a decision has not been made concerning the school districts.

2. Requirement of dismissal upon attainment of "unitary status". The issue of "unitary status" and its effect upon a court's jurisdiction and scope of remedial power has been the subject of decisions in several courts of appeals over the past few years. We are aware of only one such decision which has declined to dismiss the underlying case upon the attainment of

jority rule, favoring

rrect.

Riddick v. School Board, 784 F.2d 521, 535 (1986), the Fourth Circuit said that "once the goal of a unitary school system is achieved, the district court's role ends." See also Vaughns v. Board of Education of Prince George's County, 758 F. 2d 983, 988 (4th Cir. 1985) ("A district court's jurisdiction to grant further relief in school desegregation cases is not perpetual, however. Once a school system has achieved unitary status, a court may not order further relief to counteract desegregation that does not result from the school system's intentionally discriminatory acts").

In Morgan v. Nucci, 831 F.2d 313, 318 (1987), the First Circuit similarly indicated that the achievement of unitary status made inappropriate continued judicial intervention.

The most thorough and recent discussion of the consequences of attaining unitary status has been by the Fifth Circuit in United States v. Overton, 834 F.2d 1171 (5th Cir. 1987). The

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[6] The one exception is Dowell v. Board of Education, 795 F.2d 1516, 1519-1520 (10th Cir. 1986), cert. denied, 107 S.Ct. 420 (1987). Even there, while the court held that unitariness does not automatically compel termination of the district court's jurisdiction or the previously issued injunctions, the court noted that a school district may regain independence if the injunction is lifted (id. at 1520-21), and indicated that it would be appropriate to lift the injunction if changed circumstances made that appropriate. The United States is currently arguing to the Tenth Circuit that a proper finding that unitary status has been achieved is necessarily a changed circumstances of this sort. Thus, the Tenth Circuit standard may not, as a practical matter, differ from the other circuits. If it does, however, the position of the United States is that that osition is wrong, for the reasons discussed infra in the text.

[illegible] there had entered an order declaring that the district had achieved unitary status. Nearly a year after thi declaration, the Austin school district adopted a new student assignment plan which was substantially different from the one had operated under the consent decree. Private plaintiffs opposed the plan and argued that the court still had power to enforce the consent decree. The court rejected this argument:

> Attaining unitary status, . . . means that a school board is free to act without federal supervision so long as the board does not purposefully discriminate; only intentional discrimination violates the Constitution. As we have said, a school district is released from the consequences of its past misdeeds when it eliminates the vestiges of a segregated system and achieves a true unitary system. Id. at 1175 (citations omitted).

The Fifth Circuit later stated:

> [A] school district's attainment of unitary status "represents the 'accomplishment' of desegregation, and is the ultimate goal to which a desegregation court tailors its remedies once a finding of intentional discrimination is made. Although the [Supreme] Court has produced no formula for recognizing a unitary school system, the one thing certain 'bout unitarians is its consequences: the mandatory devolution of power to local authorities. Thus, when a court finds that discrimination has been eliminated 'root and branch' from school operations, it must abdicate its supervisory role." Id. at 1177, citing Morgan, supra, 831 F.2d at 318[7] (emphasis in original).

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[7] See also Spangler v. Pasadena City Bd. of Educ., 611 F.2d 1239 (9th Cir. 1979) (particularly the concurring opinion of Judge (now Justice) Kennedy), id. at 1242-1244, releasing the school district from continuing judicial supervision after finding that the school board had complied with a desegregation plan for nine years).

circuit has not squarely resolved the question whe the attainment of unitary status necessarily requires dismis of the case, but we submit that its decisions can be fairly no other way. *Youngblood* itself explicitly contemplates that after the three year period, plaintiffs must show cause "why *dismissal* of the case should be further delayed" (448 F.2d at 771). Thus, dismissal is not only to be permitted, but is presumed to be appropriate. *Georgia State Conference of Branc of NAACP* v. *State of Georgia*, 775 F.2d 1403, 1414 (11th Cir. 1985) (citation omitted), upon which plaintiff-intervenors elsewhere rely, likewise contemplates that the school district' "affirmative duty to eliminate the consequence of this prior unconstitutional conduct" necessarily expires upon the achievement of unitary status; the fair implication is, again, that the court's jurisdiction at such a time was ended and a new case should be filed. Discriminatory intent, rather than discriminatory effect, is the *ab initio* standard for Fourteenth Amendment violations. Compare *Wright* v. *Council of City of Emporia*, 407 U.S. 451 (1972), with *Washington* v. *Davis*, 426 U.S. 229 (1976).) See also *Pitts* v. *Freeman*, 755 F.2d 1423, 1426 (11th Cir. 1985) ("to require that plaintiffs prove discriminatory intent [is] a requirement that ordinarily would be appropriate only after a finding of full unitary status"); *United States* v. *South Park Independent School District*, 566 F.2d 1221, 1224 (5th Cir. 1978) (citing *Swann*, 402 U.S. at 32) ("once [a finding of unitariness] is made a federal court loses it power to remedy the lingering vestiges of past discrimination absent a showing [of discriminatory intent]"); Lee v. Macon Cty. Bd. of Education, 584 F.2d 78, 81 (5th Cir. 1978).

The old Fifth Circuit said that "It has never been our purpose to keep these cases interminably in the federal courts." United States v. Texas (San Felipe Rio School District), 509 F.2d 192, 194 (5th Cir. 1975). Where a district "has achieved unitary status", "then a dismissal is not out of order". Ibid. There is also reference in Pitts v. Freeman, 755 F.2d at 1426 (emphasis added), to "the unitary status that requires dismissal of the action." Likewise, Georgia State Conference referred to a hearing being needed "to declare a school district as fully unitary and thus terminate a school desegregation case (775 F.2d at 1414 (emphasis added)).

Plaintiff-intervenors cite no case where the Eleventh Circuit has declined to dismiss an action where the school district has attained unitary status. They can point only to dictum in United States v. Board of Education of Jackson County, 794 F.2d 1541, 1543 (11th Cir. 1986) -- where dismissal was granted -- that unitary status "does not inevitably require the courts to vacate the orders upon which the parties had relied in reaching that state." In that case, however, peculiar circumstances existed in that one of the school districts involved opposed the motion for dismissal filed by the other school district, apparently out of fear for its continued viability through loss of student transfers which had been

ion. It was
in discussing the "long
start the desegregation process" and
emature termination of those long-term orders that
are part of a remedy 'tailored to cure' a particular constitutional wrong." Ibid. (citing Milliken v. Bradley, 433 U.S. 267, 283 (1977)). Whatever else a dismissal in this case would be after nearly 19 years of litigation, it would not be "premature." In sum, "Jackson, on its facts, cannot be construed to invite or command indefinite and continued district court involvement to monitor and enforce earlier court orders since the declaration of unitary status has led to dismissal of the action ... . " Lee v. Macon Cty. Bd. of Educ., supra, slip op. 18-19.

A school desegregation decree is, after all, designed to be a temporary remedial measure, and so a court should retain jurisdiction only until unitariness is achieved. In Green v. County School Board, 391 U.S. 430, 439 (1968), for example, the Supreme Court stated that courts are to retain jurisdiction over school desegregation cases "until it is clear that state-imposed segregation has been completely removed." And in Swann, 402 U.S. at 15, and Milliken v. Bradley, 433 U.S. 267, 280 (1977) (emphasis in original), the Court stated that a desegregation 'ecree "must indeed be remedial in nature, that is, it must be signed as nearly as possible 'to restore the victims of criminatory conduct to the position they would have occupied in the absence of such conduct." This is consistent with the general legal principle that, once an injunction has achieved its purposes, it should not be continued, for a court's remedial power reaches no further than correction of the wrong. As the Supreme Court stated in *General Bldg. Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 399 (1982), judicial power may "extend no farther than required by the nature and the extent of [the] violation." See also *Milliken I*, 418 U.S. at 744-745.

The necessity for prompt and proper termination of judicial supervision of school districts once unitariness is achieved is accentuated by the fact that the indefinite continuation of the court's order is not costless: it substantially disrupts normal local control over public education. While local control properly may be displaced until those authorities meet "their obligation to proffer acceptable remedies," *Swann*, *supra*, 402 U.S. at 16, timely restoration of local control is also an important consideration. "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process." *Milliken I*, 418 U.S. at 741-742. See also *Milliken II*, 433 U.S. at 280-281; *San Antonio School Dist.* v. *Rodriguez*, 411 U.S. 1, 49-50 (1973). Once a school district is unitary, "[t]he relinquishment of jurisdiction . . . serves to restore to the state and local agencies the legal responsibility for supervising a school system that is properly theirs ... ." Spangler, supra, 611 F.2d at 1242 (Kennedy, J., concurring).

Conclusion

The United States does not seek to end this Court's supervision of any school district which has failed to comply with the law. Indeed, if the evidence shows that there exists such a school district here, we will vigorously re-activate the case to ensure that the task given by Brown v. Board of Education is completed. But we do not believe that any school district here fits that description. After over a decade of inactive status for these cases, it is now time to decide whether this Court's continued jurisdiction remains appropriate.

For the reasons stated above, this Court should deny plaintiff-intervenors request that the stipulations and motions filed herein be dismissed. This case should proceed, and a discovery schedule should be set, with the aim that this Court determine whether these school districts have attained unitary status. If they have, then this Court should hold that the judgment of this Court has been fully satisfied and that the above case should be dismissed as to the named school districts, the injunctions entered herein dissolved, the judgment discharged, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that the defendants have fully and faithfully implemented and maintained all provisions of this Court's orders.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 1988, I served copies of the foregoing pleading to counsel of record, by depositing copies of said documents in the United States Main, postage prepaid, addressed to:

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Legal Defense and
Education Fund
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standing tr[illegible] the fixing of their maxim[illegible]al compensation and percentage fees as provided in 28 U.S.C. 586(e).

(2) Administer the Attorney General's recruitment program for honor law graduates and judicial law clerks.

(3) Coordinate Departmental liaison with White House Staff and the Executive Office of the President.

(4) Coordinate and control the Department's reaction to civil disturbances and terrorism.

(5) Perform such other duties and functions as may be assigned from time to time by the Attorney General.

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1) (i), (ii), and (iii) of this section to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in grades GS-15 and below, to appoint special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b), and to appoint Assistant United States Trustees and fix their compensation, to the official in the Office of the Deputy Attorney General responsible for attorney personnel management.

(d) The Deputy Attorney General may redelegate the authority provided in paragraph (b)(1)(iv) of this section to take final action in matters pertaining to the approval of the appointment by United States Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. 586(e) to the Director of the Executive Office for United States Trustees.

(e) The official in the Office of the Deputy Attorney General responsible for attorney personnel management shall be the Director, Office of Attorney Personnel Management.

(1) The Director, Office of Attorney Personnel Management, may exercise any authority delegated to that official under § 0.15(c) and § 0.19(b) of this part and may perform any other attorney personnel duties as may be assigned from time to time by the Deputy Attorney General;

(2) The Director, Office of Attorney Personnel Management, may redelegate the authority provided in paragraph (e)(1) of this section to the Deputy Director, Office of Attorney Personnel Management.

(5 U.S.C. 301; 28 U.S.C. 509, 510, 515, 542, and 543)

[Order No. 960-81, 46 FR 52340, Oct. 27, 1981, as amended by Order No. 1063-84, 49 FR 32065, Aug. 10, 1984; Order No. 1097-85, 50 FR 25708, June 21, 1985]

§ 0.18a *Office of Small and Disadvantaged Business Utilization.*

The Office of Small and Disadvantaged Business Utilization is headed by a Director appointed by the Attorney General, who shall be responsible to, and report directly to, the Deputy Attorney General. Subject to the general supervision and direction of the Deputy Attorney General, the Director shall:

(a) Be responsible for the implementation and execution of the functions and duties required by sections 637 and 644 of Title 15, United States Code;

(b) Establish Department goals for the participation by small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, in Department procurement contracts;

(c) Have supervisory authority over Department personnel to the extent that the functions and duties of such personnel relate to the functions and duties described in paragraph (a) of this section;

(d) Provide resource information and technical training and assistance regarding utilization of small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, to Department personnel who perform procurement functions;

(e) Assign a small business technical adviser to any Department offices to which the Small Business Administration assigns a procurement center representative, in accordance with section 644(k)(6) of Title 15, United States Code;

(f) Develop and implement appropriate outreach programs to include small minority businesses in procurement contracts;

(g) Cooperate and consult regularly with the Small Business Administration with respect to the functions and duties described in paragraph (a) of this section;

(h) Review, evaluate and report to the Deputy Attorney General on the performance of organizational units of the Department in accomplishing the goals for utilization of small and disadvantaged businesses; and

(i) Prepare the Department's annual report to the Small Business Administration on the extent of participation by small and disadvantaged businesses in Department procurement contracts.

(28 U.S.C. 509 and 510; 15 U.S.C. 644(k))

[Order No. 906-80, 45 FR 52145, Aug. 6, 1980]

Subpart C-1—Office of the Associate Attorney General

§ 0.19 Associate Attorney General.

(a) The Associate Attorney General shall advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to criminal matters. The Associate Attorney General shall also provide overall supervision and direction for the following organizational units: Criminal Division; Drug Enforcement Administration; Immigration and Naturalization Service; Executive Office for United States Attorneys; Bureau of Prisons; Federal Prison Industries, Inc.; Office of Pardon Attorney; Executive Office for Immigration Review; United States Marshals Service; and the United States National Central Bureau, INTERPOL. The United States Parole Commission is under the supervision of the Associate Attorney General for administrative purposes. In addition the Associate Attorney General shall:

(1) Exercise the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in pay grades GS-15 and below in organizational units subject to his direction and of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the pu[illegible]c [illegible]est so requires and fixing their salaries.

(2) Perform such other duties as may be especially assigned from time to time by the Attorney General.

(3) Exercise the power and authority vested in the Attorney General to authorize the Director of the United States Marshals Service to deputize persons to perform the functions of a Deputy United States Marshal.

(b) The Associate Attorney General may redelegate the authority provided in paragraph (a)(1) of this section to the official in the Office of the Deputy Attorney General responsible for attorney personnel management.

(c) The Associate Attorney General is the Attorney General's designee for purposes of determining whether, under Part 39 of this title, a handicapped person can achieve the purpose of a program without fundamental changes in its nature, and whether an action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Associate Attorney General may not redelegate this authority.

(28 U.S.C. 509, 510; 5 U.S.C. 301, and 8 U.S.C. 1103)

[Order No. 960-81, 46 FR 52341, Oct. 27, 1981, as amended by Order No. 998-83, 48 FR 8056, Feb. 25, 1983; Order No. 1047-84, 49 FR 6485, Feb. 22, 1984; Order No. 1106-85, 50 FR 36055, Sept. 5, 1985]

Subpart D—Office of the Solicitor General

§ 0.20 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Solicitor General, in consultation with each agency or official concerned:

(a) Conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and, in accordance with § 0.163, settlement thereof.

(b) Determining whether, and to what extent, appeals will be taken by the Government to all appellate courts (including petitions for rehearing *en banc* and petitions to such

Senator SIMON. Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you.

Mr. Reynolds, it's good to see you here today. I'm sure this is a spirited time for you, and you knew it would be when you came here; and the reality is that you have devoted some countless hours to your job as Assistant Attorney General for the Civil Rights Division. You are, I think, admired for your tireless efforts.

I know the hours that you do put in. Those who are your greatest detractors, and many of them happen to reside on this committee, would tend to forget that, I think. And I don't think the public will really ever know all that you have done in the way of your own personal investment of time, to try to promote the cause of civil rights in America. Your reputation for hard work and dedication precedes you here.

I think you have been very clear that you have tried to, in the Department of Justice, to pursue civil rights on behalf of all Americans. Now, obviously, some will always try to sully that reputation of yours.

You noted in your statement this is your last appearance before the committee, to seek your budgetary authorization. Much of what you will request here will go to future attorneys general, and the future Assistant Attorney General for Civil Rights. I personally think that during your tenure you have made some very important strides in areas such as fair housing, voting rights; clearly so, criminal/civil rights violations and countless other aspects that have to do with your position.

I have reviewed the testimony regarding the resources necessary for your Division, and I hope we might maintain that emphasis as you have in the past.

Yours is a tough job. I remember the person that held the job under the Carter administration, with quite a sizeable agenda, and it never got done under a Democrat Congress, never got done at all, because it was too broad and too expensive. I don't know who we blame for that, but looking around, we must do that here in Washington; we must find someone, for heaven's sakes, to blame.

I know the kind of questioning that has gone on here today, and the harshness of some of it. You are not an insensitive man or an uninvolved man, and there are many on this panel who have just loved handwrassling with you since you wandered in here. Mudwrassling might be an upgrade, on some of it.

It is curious to me how we can try to bring things current with questioning when we just want to put the kind of etch on the wall that we don't like you, you see; and never have, and we'll try like hell to embarrass you and ram it to you in this place.

Now that's good when you're out doing combat or sports or whatever, but it's not too good when we try to do this in what is simply an authorization hearing. It is curious to me how long some of the people on this panel have been after your hide; and so maybe we can kind of clear the underbrush; not get too much rhetoric into it about, I guess, the alleged fact that you must be a racist; I don't know.

It seems to me that's what they're trying to lay on you, that somehow you delight in doing things to minorities in the United States. I gather that is kind of part of what this is. That is what is directed, if you listen carefully; that you are a racist or someone totally insensitive to the issues of minorities in this country.

There are a couple things, however, if we can sort through the stack, as I always say, of emotion, fear, guilt and racism, which makes it so tough to do our work around here; because when you run short of facts you flee behind one of those things.

Now, I have a question here. We have a bill, and a lot of discussion about it, called fair housing. It is active in the House Judiciary Committee, similar legislation in the Senate, obviously. Now at least one of the primary issues; and of course you see if you bring up something like this, then you immediately fall prey to the fact that you—heh, heh, heh—must also be insensitive and a clod and all the stuff that goes with it; but I have legislated for 22 years and I am perfectly delighted and perverse enough to plow around in that kind of ground.

One of the issues that puzzles some of us and concerns us in this proposed fair housing ~~amendment~~ legislation is the constitutionality of the administrative law judge. Now, the American people don't need to understand anything about Brad Reynolds, and how you have triggered the glands of many on this committee for so long. They don't need to know that.

What they need to know is that under this proposed legislation, an administrative law judge can levy a fine and civil penalties without the opportunity for a jury trial. That's what they need to know, and that's really, I think, something they hear.

Additionally, there has been a concern regarding the definition of a handicapped person, an additional, newly protected class—and these are the things we have to deal with if we can, because this is what we are supposed to be doing; legislating, not seeing how many spears we can tack onto your vest today.

A newly protected class, and the inclusion of "families with children" as a proposed protected class. Now what is the effect of those two new protected classes; the handicapped, which includes drugs or controlled substance or alcohol abuse as a handicap. Those are the things that have to do with real life in America.

I would appreciate having your thoughts on the status of that, within your division. Do you perceive a need for increased enforcement as proposed by the House and Senate bills? If these bills were to pass, what effect would it have on your housing and civil enforcement section or whoever is your successor? I think that is important. I would like to have your response to that.

Mr. REYNOLDS. Well, Senator, if I can try to go through it quickly. I do think it is terribly important that we get a fair housing act out of Congress. It is necessary to put more teeth in the enforcement effort in the fair housing area; and while I believe that the 1968 law was one of those banner pieces of legislation that was terribly important and had served the country well, it certainly can use some stiffening and some amendments.

I think that there is a very real concern if we have coming out of the Congress a fair housing act that has as a part of it an ALJ process that gives to the ALJs the ability to assess damages or civil penalties.

There is a very real concern that it will come up short in the Supreme Court as an unconstitutional measure. The House has struggled with that, and thus far has not reached a satisfactory conclusion in that regard; and I think that we are still dealing with something that is not going to pass muster as a constitutional matter under the seventh amendment.

The Supreme Court I think it was last term spoke quite directly to this issue. Indeed, spoke directly to it in response to an argument the administration had made on the other side, and did tell us in no uncertain terms that you cannot have an administrative law judge capability that assigns where the ALJ can give damages or civil penalties.

Now, there are ways that we think we can work with the Congress to deal with that problem and to correct it so as to make it constitutional if we had the opportunity to do that. But I do think that the present proposals now unfortunately are ones that have that failure, and if you pass a law and that happens, it's going to set fair housing enforcement, I think, back in major, significant ways, way beyond where it is today; and I think it will be a real disservice to all those who we are holding out a promise of greater enforcement on.

So I would urge that there be a considered effort to try to treat with what I think is a, right now a constitutionally-flawed piece of legislation.

On the familial status side, as far as that is concerned, the administration has indicated it has reservations about that. As near as I can determine, and I have gone through all the testimony that has been given in this regard and heard all the arguments, the concern really for this provision is driven by the fact that there is a feeling of familial status as needed as a proxy for race discrimination; because there are landlords and owners of housing out there that for racial reasons are turning away people with families or with children; not because of the family reason.

The statute as it now exists deals with race discrimination it seems to me very effectively. I don't think that putting in another provision as a proxy for race is going to do any better job to come to grips with that problem.

What it is going to do is to add to the legislation a major disincentive for housing in this country for elderly citizens. And you are going to find that developers are simply not going to make available anymore housing that will be for the elderly the way that the law is written, because there is going to be a familial status requirement that is going to drive the whole development industry in the wrong direction.

The gain that one suggests you might make by putting in something as a new category of protected or new protected class, which is simply a proxy for dealing with the race discrimination problem that is already covered, that gain when measured against the unbelievable loss that I think the elderly citizens of this country will suffer as a result of such a provision suggests to us that that should be something the Congress thinks long and hard about.

So I would suggest that on that one, more thought needs to be given.

As to the definition of handicap, as I understand it, the House has sought to come to grips with that, and there are some amendments that are dealing with the problem of drug addition and alcoholism and how that has to be treated or should be treated in the definition of handicap. I think it is clear that that kind of refinement has to take place, and my sense is that with some further discussion with the administration that that is something that everybody is generally inclined to work to fix, and I would hope that that one we could fix.

Senator SIMPSON. Mr. Chairman, I thank you.

May I submit for the record some questions with regard to how well the special counsel provision is working with regard to the immigration issue. I understand there are very few complaints where we find discrimination based solely on employer sanctions, and that's something all of us were interested in; that is an admirable record in statistics, that there are not a lot of complaints coming in.

I would ask the record to be complete on that, and I will submit some questions in writing.

I thank the Chairman very much.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. Reynolds, last year I asked you some questions about the fall 1986 effort of the Republican National Committee to challenge voters in Louisiana. You may recall that the Republican National Committee asked State officials for lists of black voters and sent postcards into those precincts.

If the postcards were returned undelivered the Republican National Committee arranged for the voter to be challenged. This program was known as the ballot security program or ballot integrity program.

The Louisiana Democratic Party challenged this practice and obtained a court order prohibiting these activities. Last year when you appeared before the committee, I asked you to explain why you did not follow up on this information, do a thorough investigation, and prosecute.

I asked you:

> A deliberate and systematic attempt by a major political party to eliminate black voters from the voters register was worth a full and serious investigation and an indictment, if that is appropriate?

That is to be found on page 47 of the hearing.

You responded, and I quote:

> Well, we did do an investigation. Indeed, what we did conclude is that there was an injunction that was issued by the court quite promptly, a preliminary injunction that then became a permanent injunction; that the activity that had been generated really did not get started and that there were no individuals who had been adversely affected in terms of affecting their franchise.

End of quote.

You went on to say: "The program was stopped because people went to court quite promptly and the court ended it, and I think it was the agreement"—and I want you to pay attention to these words:—"and I think it was the agreement of all of us that looked into it that we could not find a violation of the Voting Rights Act that it would allow us to go in and prosecute in that circumstance and that was the conclusion of everyone who looked into the matter." End of quote.

Now Mr. Reynolds, after a long struggle by my office to get the documents that the Department of Justice had on this issue, I have memos which show that everyone did not agree that the matter should be dropped. In fact, just the opposite.

These documents show that your staff did recommend an FBI investigation in spite of the court order against the practice. For example, I have an October 10, 1986 memo from Gerald Jones who in 1986 was chief of the voting section of the Civil Rights Division.

This memo is written to Mr. James Turner who in 1986 was Assistant Attorney General in the Civil Rights Division. The Gerald Jones memo shows that Jones recommended an FBI investigation. The memo reads as follows:

> Jim, as indicated in the earlier briefing papers we sent to Brad re the Louisiana voter challenge matter, here is the FBI request we propose to send out. Needs initialing.

Mr. Chairman, I ask that this be included in the record.

Senator SIMON. It will be included in the record.

[The memo of Jones to Turner follows:]

ROUTING AND TRANSMITTAL S

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Mr. Turner		
2.		
3.		
4.		
5.		

☐	Action	☐	File	☐	Note and Return
☐	Approval	☐	For Clearance	☐	Per Conversation
☐	As Requested	☐	For Correction	☐	Prepare Reply
☐	Circulate	☐	For Your Information	☐	See Me
☐	Comment	☐	Investigate	☐	Signature
☐	Coordination	☐	Justify	☐	

REMARKS

Jim -

As indicated in the earlier briefing papers we sent to Brad re the Louisiana voter challenge matter, here is the FBI request we propose to send out. Needs initialing.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Ginny Jones 10-10-86	Phone No.

5041-102

U.S.GPO: [illegible]

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

Senator METZENBAUM. Attached to that Jones memo is a memo addressed to the FBI Director, stating that various sections of the Voting Rights Act may have been violated by the ballot integrity program, and requesting that an investigation be conducted.

I ask that the second memo be included in the record.

Senator SIMON. It will be entered in the record.

[The memo to the FBI Director follows:]

WBR RJW:sw
DJ 166-33-104

Voter Registrars of 11 Louisiana
Parishes, Mark Braden, Richard Andersen,
James O'Connor, et al., Subjects; Voting
Discrimination - Voting Intimidation
CIVIL RIGHTS; ELECTIONS LAWS

Director, Federal Bureau of Investigation	Wm. Bradford Reynolds Assistant Attorney General Civil Rights Division

We have received information that prior to the September 27, 1986 primary election in Louisiana, an organization known as the Ballot Integrity Group, Inc. sponsored a large-scale voter registration challenge in Louisiana. As the attached memo describes, this scheme may have been directed specifically at black voters o ly. In fact, a state court judge has already found that the scheme was designed to disenfranchise black voters. These activities, if substantiated, may constitute a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, as well as 42 U.S.C. 1971(a)(2)(A) and 1971(b), 42 U.S.C. 1973j(2), and 42 U.S.C. 1973j(c).

Accordingly, please conduct an investigation to determine:

1. From Mark Braden, an attorney with the Republican National Committee in Washington, D.C., Richard Andersen, of the Ballot Integrity Group in Chicago, Illinois, and James O'Connor, an attorney assisting the Ballot Integrity Group in Louisiana, all information they have regarding the following subjects. With respect to the activities described in items (a) through (e), determine from each individual the steps or actions that were taken to accomplish the activity, including the identity of all persons who were involved, and any other details related to the Ballot Integrity Group's activities in Louisiana. Also determine the basis for (or source of) each interviewee's knowledge in each regard.

    a. The ordering and purchase of any voter registration information in the form of a computer tape or otherwise, from the Louisiana Department of Elections and Administration or any parish election office prior to the September 27, 1986 primary election. Please obtain any documentation of such order or purchase.

b. The bulk mailing to voters in Louisiana prior to September 27, 1986.

c. The precise method used to select (1) those voters who would be mailed the initial envelopes and (2) those voters who would be challenged.

d. The operation of the "challenge to unqualified voters" program, as described in the letter from Richard Andersen, Attachment C to the attached memorandum.

e. The "field investigations" conducted in New Orleans or elsewhere, the results of which were used to recommend criminal prosecution for vote fraud.

f. Any media announcements (press releases, press conferences, statements, etc.) by any individual connected with the Ballot Integrity Group or the local, state, or national Republican Party, relating to the voter challenges filed with parish registrars, vote fraud allegations, or challenging voters at the polls on election day.

2. From George Guidry, Assistant Commissioner of Elections in Louisiana, all information he has regarding 1(a)-(f).

3. From each of the eleven parish registrars where challenge affidavits were filed, all information they have regarding 1(a)-(f) above. In addition, please obtain the following from each registrar:

a. The name, address, race, and political party affiliation of each affiant who filed a registration challenge affidavit in their office.

b. A copy of the challenge affidavits filed, the list of voters challenged, the "items of evidence" offered to support the challenge, and any other documents provided to the registrars relating to these challenges.

c. The number and race of the challenged voters.

d. The number of challenged voters, by race, for whom incorrect addresses were used in the initial Ballot Integrity mailing; what action was taken by the registrar regarding these particular challenges.

e. The number of notices and citations mailed and the number of voters whose names were published in the newspaper pursuant to La. RS 18:193 in response to these challenges. Of these, identify how many are black.

f. The number of voters removed from the registration books as a result of these challenges. Of these voters, identify how many are black.

g. The number of registered voters in the parish by precinct by race.

h. Election returns, by precinct, for the 1984 Presidential election.

4. From the parish voter registrars for East Baton Rouge, Ouachita, and Rapides Parishes, any information they have regarding the order and/or purchase of voter registration information for their parish, in the form of a computer tape or otherwise, by anyone since July 1, 1986, including specifically persons connected with the Ballot Integrity Group or the local, state or national Republican Party. Please obtain any documentation of any such order or purchase.

5. From each person named, in response to your inquiries, as an individual who was involved in the steps or actions described in 1(a)-(f), all information they have regarding 1(a)-(f).

Senator METZENBAUM. There is another memo which shows that the Jones memo and the proposed FBI investigation request were both sent to you by Mr. Turner. Mr. Turner's memo to you reads, and I quote:

"Brad, the civil suits between the political parties has been settled with Republicans agreeing to cancel any further activity. However, our jurisdiction may be criminal and arguably not affected by settlement."

I ask that the third memo be included in the record.

Senator SIMON. It will be included in the record.

[The memo from Mr. Turner to "Brad" follows:]

DEPARTMENT OF JUSTICE

INTERNAL ROUTING-ACTION SLIP

Brad

Here's re voter challenge matter in La. along with a proposed FBI request for your review. The civil suit between the political parties has been settled with Republicans agreeing to cancel any further activity. However, our jurisdiction may be criminal & arguably not affected by settlement.

☐ RECOMMENDATION-COMMENT
☐ SEE REMARKS OR REVERSE
☐ MAKE COPIES FOR
☐ RETURN TO
☐ SIGN
☐ FILE
☐ SEE ME
☐ CALL ME
☐ NECESSARY ACTION
☐ APPROVAL
☐ AS REQUESTED
☐ INFORMATION

Senator **Metzenbaum**. Mr. Reynolds, you told this committee last year that it was, and I'm quoting you:

"It was the agreement of all of us who looked at it that we could not find a violation of the Voting Rights Act."

Everyone did not agree, obviously, Mr. Reynolds. In fact, everyone involved but you recommended a further investigation. Didn't you mislead this committee last year?

Mr. **Reynolds**. No, Senator, not at all. That's the way the memos came up; we talked about it afterwards, and it was indeed agreed that it made no sense to go forward. I got an indication I think from the Criminal Division that they were of the view that we should not go forward with it.

Senator **Metzenbaum**. These three memos which all say "go forward" you say that there was agreement that it should be dropped. How do you reconcile black against white?

Mr. **Reynolds**. Well, you've got to go through the rest of the documents. You see, you've got to reconcile it by not reading half the pages we gave you, but do the whole record.

Senator **Metzenbaum**. I will be glad to read all of them and put the whole document in. You show me something in the document—I'll send them to you—that contradicts it.

Mr. **Reynolds**. I think there are later indications in there that we did have further discussion. The agreement was that we should not go forward with it.

Senator **Metzenbaum**. All right, let's go to that.

There is yet another memo which shows that everyone did not agree that the matter should be dropped. On October 7, 1986, Gerald Jones, head of the Voting Section, sent you a memo on this matter which stated as follows. Quote:

> The facts we have determined to date are contained in the attached memo prepared by Beckey Wertz. We will need to acquire additional factual information to determine if any Federal violation is involved and thus Ms. Wertz has recommended further investigation by the FBI. In my view, the State court action has eliminated the need for civil injunctive relief and any further investigation likely will center on criminal violations. Thus, we plan to discuss with Linda Davis the appropriateness of having the Criminal Section coordinate the investigation, unless you disagree.

Mr. Chairman, I ask that memo 4 be included in the record.

Senator **Simon**. It will be included.

[The memo of Jones to Reynolds of 10/7/86 follows:]

GWJ:PFH:vnv
DJ 166-33-104

Subject
Louisiana Voter Registration
Challenges

Date
OCT 7 1986

To
Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

From
Gerald W. Jones
Chief, Voting Section
Civil Rights Division

As indicated in the earlier memorandum we sent you (copy attached), our inquiry into this matter stems from allegations that a private organization (Ballot Integrity Group, Inc.) and the Republican Party have pursued efforts to remove black registered voters from the voting rolls in Louisiana.

To date, our inquiry shows that the Republican Party obtained from the state a list of black registered voters in selected parishes throughout the state. The Ballot Integrity Group then mailed public service announcements to voters in selected precincts within those parishes. This was done to determine if the persons actually lived at the addresses listed. If envelopes, which were marked "Do not forward" were returned, a procedure was established to challenge the voters' qualifications to vote.

State law allows a challenge by means of an affidavit executed by two registered voters. Although our understanding is that the state provided a mailing list of black registered voters, the Republican Party tells us that the mailing effort in fact was directed at all voters in precincts in which President Reagan received less than 20 percent of the vote in 1984.

In early September, 25,000-30,000 voters were challenged in eleven parishes. A state court action was initiated and the court promptly enjoined the challenge process. The court found that the process was directed against black voters only and that state law was not followed properly.

The information presently available indicates that several violations of federal law may have occurred. First, Section 2 of the Voting Rights Act as well as 42 U.S.C. 1971(a)(2)(A)*/ may have been violated by efforts by parish officials to remove black voters from the poll lists while not applying similar standards to white voters. The need for relief under these may be obviated, however, by the action of the state court which enjoined the challenge before any voters were removed. Also, the parish officials involved seem merely to have been following state purge procedures and our enforcement efforts should be directed against the organizations that effectuated any discrimination that may have been perpetrated.

It is questionable whether we could maintain an action under either Section 2 or 1971(a) (2)A against the Ballot Integrity Group or the Republican Party, who in this instance, was not acting on behalf of the state. The "private" conduct may be reached, however, under 42 U.S.C. 1971(b) which prohibits, in federal elections, interference with the right to vote whether "under color of law or otherwise.". (The challenge effort was designed to preclude voters from voting in the September election, which was a federal election.) The criminal provisions of the Voting Rights Act (42 U.S.C. 1973j) also may be implicated by a conspiracy to remove black voters from the voting rolls pursuant to standards that are not applied to white voters.

The facts we have determined to date are contained in the attached memo prepared by Beckey Wertz. We will need to acquire additional factual information to determine if any federal violation is involved and thus Ms. Wertz has recommended further investigation by the FBI. In my view, the state court action has eliminated the need for civil

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*/ 42 U.S.C. 1971(a)(2)(A) provides: (2) No person acting under color of law shall -

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

injunctive relief and any further investigation likely will center on criminal violations. Thus, we plan to discuss with Linda Davis the appropriateness of having the Criminal Section coordinate the investigation, unless you disagree.

Senator **Metzenbaum**. Mr. Reynolds, you told this committee in unequivocal terms that: We all agreed there should be no criminal investigation or criminal prosecution. The fact is that your people, in memos to you, said there should be.

Mr. Reynolds, the argument is, and I have heard you say that Senator Kennedy and I are picking on you. I am only going to the facts. I am only going to the substance of what you said. What you did before this committee takes me back to your confirmation hearing before this committee.

We asked you why you didn't file suit to challenge voting procedures in Mississippi. You said that you consulted with civil rights attorneys and they told you there was no need to file suit.

We investigated and found that just the opposite was true. You didn't consult with many of the key civil rights lawyers, and those civil rights lawyers you consulted with said they told you to file suit.

You misled the committee during your confirmation hearings and you misled the committee last year. I wasn't casual, Mr. Reynolds, when I asked the Chairman to swear you in today, because frankly, I don't have any other conclusion that I can reach. This isn't a matter of picking on you; this isn't a matter of disagreeing with you philosophically; this isn't a matter of questioning your word; it is a question of saying that you misled the committee. You misstated the facts. You lied to the committee.

I do not understand how you, holding the position of Associate Attorney General, can sit before us and not recognize it, that indeed, that's exactly what you did do.

Mr. **Reynolds**. Well, Senator, just as you did in the hearings, you again state things in half truths, and——

Senator **Metzenbaum**. What kind of half truths? What kind of half truths? Tell me one.

Mr. **Reynolds**. The fact is that the voting section came up with a recommendation that we consider the—we send it to the Criminal Division to see whether an FBI investigation should go forward. The decision was made that it would not make sense, in light of the circumstances, to do that; that was agreed upon by the Criminal Division, and I don't—the internal memos on the Voting Section were a recommendation that we refer it to the Criminal Division to have them make that judgement. That's who makes the judgement.

Senator **Metzenbaum**. Mr. Reynolds, you not only ignored your staff, but you also ignored the findings of a Louisiana State Court judge on this 1986 ballot security program.

This is what Judge Lee of the 9th Judicial District Court of Louisiana said about this illegal program. Quote:——

Senator **Humphrey**. Mr. Chairman, may we have regular order?

Senator **Simon**. The Senator from Ohio, if you can conclude.

Senator **Metzenbaum**. Has my time run out?

Senator **Simon**. Your time has.

Senator **Metzenbaum**. I will finish up. I didn't understand.

Quote: This was an insidious scheme by the Republican Party to remove blacks from the voting rolls. The attempted purge was targeted at the black voters in violation of the 15th Amendment to the U.S. Constitution, and Article 1, Section X of the Louisiana Constitution.

The only reasonable conclusion—said the Court—is that they initiated this purge with the specific intent of disenfranchising these blacks of the right to vote.

Those are strong words, but not strong enough for you, apparently. I ask that that court decision be made a part of the record.

Senator SIMON. It will be entered in the record.

[Not available at press time.]

Senator METZENBAUM. My last question, please. I want to know how you reached your decision not to approve a criminal investigation. Your staff recommended that you conduct one; you said no.

Did you talk to Mr. Braden of the Republican National Committee or anyone else connected with the political organization at any time about the ballot integrity program?

Mr. REYNOLDS. I don't recall whether I did or not. There were discussions at that time with some people, and I don't know whether he was in on them or not.

Senator METZENBAUM. You don't know if you talked with the political leadership?

Mr. REYNOLDS. I don't recall. I just don't recall. I know there were some discussions around that time about what it was, how it happened. We had discussions of some sort. I just don't recall who was in on them.

Senator METZENBAUM. Mr. Reynolds, my time is up but I just have to say to you that it rings very familiar. There is another person in the same department where you work, who just also seems to have a lapse of memory every time we get to the critical question. My time is up.

Mr. REYNOLDS. Well, Senator, I hope you can remember every person you've met with for every day in all your meetings, weeks on end, months, 2 years back, 3 years back, on instantaneous recall. I certainly would say that if you can do that, you are a superman that is far better than everybody else in this room.

Senator METZENBAUM. I would certainly remember if I were a Government official and I saw fit to talk with the chairman——

Mr. REYNOLDS. Well, you are a Government official, and it seems to me you are official at least in the political-Congressional side, and I would think that in those circumstances your memory would probably fail you a little bit on some of the meetings you had 2 or 3 years ago, if you had as many as I did. I wish I could recall, but I don't have a recollection——

Senator SIMON. The gentleman's time has expired.

Senator Humphrey.

Mr. REYNOLDS. I wish I had your recall, Senator.

Senator HUMPHREY. Mr. Chairman, just as a matter of curiosity, I ran the timer on my watch when the round changed sides, and that was 14 minutes and 49 seconds worth of prosecution.

How much time is each member allowed?

Senator SIMON. We are allowed 10 minutes, but the Chair is generous to members if they want to conclude a particular line of questioning, and I will be to the Senator from New Hampshire, also.

Senator HUMPHREY. I thank the Chair.

Mr. Chairman, I want to take the occasion to commend Brad Reynolds for his important and courageous contributions to the cause of justice and to genuine equal opportunity in this country.

Although I expect that he will be serving at the Department for the duration of the year, this might well be his last appearance of this type before this committee, at least during this administration. And I rather imagine that is a welcome fact for Mr. Reynolds, but the Justice Department will be a lesser place when he departs from it.

Mr. Reynolds left a lucrative Washington legal practice in 1981. He's probably been thinking of that, this afternoon, to devote himself to public service at the Justice Department. For 7 years he has worked tirelessly and thanklessly, and less than thanklessly to further the critical goals of the civil rights laws which are genuine equal opportunity for persons of all races, sexes, and National origins. But unfortunately he has drawn harsh and often vicious criticism for his principal disagreement with those who advocate race and gender quotas and preferences as a standard policy of civil rights law.

Although Mr. Reynolds' position on this issue is clearly based on the first principles of civil rights laws and the equal protection clause, he has been falsely portrayed by opponents as an enemy of civil rights.

That is the ultimate irony, that he should be vilified for insisting on the same construction of the Civil Rights Act that Senator Hubert Humphrey championed on the floor of the Senate when title VII was passed.

Mr. Chairman, Brad Reynolds is no enemy of civil rights. To the contrary, he is a committed and conscientious champion of the same pure principles of equal opportunity that were advocated by Senator Humphrey and other key sponsors of the 1964 Civil Rights Act.

There is no doubt, in my opinion, because I have seen this dynamic so many times in this town, as we all have. There is no doubt that a lesser man would have retreated long ago in the face of the unfair and simply dishonest attacks which he has endured. But Brad Reynolds is no summer soldier. While others withdraw to greener pastures of multimillion dollar law firms, Mr. Reynolds stands fast at his post.

I commend him for that and for the conscientious efforts and effective leadership that he has brought to the Civil Rights Division during his long tenure. Despite the criticisms from the sidelines, his energetic management has produced remarkable and lasting successes in civil rights enforcement and policy, and his commitment to the genuine principles of equal opportunity for all and equal protection for all will surely prevail in the end.

Mr. Reynolds, there have in fact been unprecedented levels of activity in the prosecution of criminal violations of the civil rights laws. Why has the division placed such great emphasis on criminal prosecutions?

Mr. REYNOLDS. Well, our priority there was basically the result of the concern we had that the Klan and the other hate groups that were in place and quite prominent in certain areas of the country when we first came in to office were gaining in their power rather than than receding.

We therefore made that as a priority to deal with, and I think we have done it in a most effective way. Also, the other racial violence kind of crimes that were being perpetrated, which are the ones which get celebrated and therefore with the most publicity tend to, I think if not dealt with harshly, send the wrong message; were ones that we wanted to go after with a vengeance.

Senator HUMPHREY. I have not been here from the start of this hearing, so perhaps I missed this, and if I am being redundant in my questions, I would be happy to be corrected, because we have a super sufficiency of redundance around this place. So if I am redundant, someone stop me.

Do you have statistics with you that indicate the stepped-up prosecution of civil rights crimes by white supremacist groups such as the Klan?

Mr. REYNOLDS. I don't know whether we compiled the statistics in that form that are related just to Klan activity. I think that certainly with regard to that, the statistics would show a down turn rather than an upturn in the last couple of years, because we have indicted and convicted a number of members of the Klan, and we have been very effective in I think decimating the ranks of that particular organization in a major way.

Senator HUMPHREY. Exactly.

Mr. REYNOLDS. So I think that they would be dramatically down.

Senator HUMPHREY. The point is that vigorous enforcement, vigorous prosecution of criminal violations has had a deterrent effect.

Mr. REYNOLDS. Absolutely. In a major way.

Senator HUMPHREY. I want to talk about employment discrimination. I am informed the Division's basic approach toward employment discrimination cases is to identify actual victims and to seek to obtain relief for those victims in terms of back pay and opening employment and promotion opportunities.

Apparently your critics prefer a more sweeping approach which seeks to obtain comprehensive class-based remedies, whether or not the individuals who benefit have actually been victims of discrimination.

Can you comment on your approach to this distinction, or these two different approaches to employment discrimination litigation?

Mr. REYNOLDS. Well we, of course, have been adamant that the Constitution and the laws protect individual rights, not class-oriented rights; and that in the employment arena, that the law requires that individuals, based on their merit and worth, are the ones that have the protections and need to and require the protections, and are at the centerpiece of our laws, and that we should not change that focus to group-oriented kinds of techniques.

That has been an issue that has been joined in the Supreme Court in about eight or nine cases over the past 7 years, and I am happy to say that those cases have gone by and large in our way; not as far as we would like them to go, but I think that the court has ruled that the rights that are protected are individual rights, not class rights; that the discrimination that is targeted by the laws is not societal discrimination but is discrimination that is indeed engaged in or conducted by specific employers; that the idea of affirmative action preferences is discriminatory in its own style and that it will be available only as a remedial measure after finding discrimination; and even then only in the rare cases where all else failing to cure the discrimination for a short period of time, if you have a persistent, flagrant discriminator, it will be—the Court said it will then be possible to use some kind of an affirmative action preference in order to deal with that situation.

But then in all other instances, I think the Court has now been quite clear in its pronouncement that we look to individual rights; not group rights. We reject preferential treatment on the basis of skin, color or gender; and that the principle of nondiscrimination is not one that should be lightly compromised, if at all; but should be the centerpiece in the employment arena.

Senator HUMPHREY. One example of that approach and the success of that approach is that of the case involving the Chicago Police Department where, am I correct, the Department obtained a settlement amounting to some $9 million in back pay for over 600 actual victims of employment discrimination?

Mr. REYNOLDS. I think it's $9.2 million. It's one of the largest that has ever been obtained. I think it was a very worthwhile settlement.

Senator HUMPHREY. I suppose we all have our own point of view, but I agree with the Division's policy against seeking quota relief, because it is my view that civil rights acts and the Constitution were not intended to substitute one form of discrimination for another.

Is it your view, is it the Department's view that the imposition of quotas and other race and gender-based preferences tend to undermine the principal of equal employment opportunity and can actually undermine the efforts to achieve the goal of non-discriminatory employment market?

Mr. REYNOLDS. Well, that has to be the case. Quotas, as you describe them, are discriminatory; and the idea that you can cure discrimination with discrimination is oxymoronic. It is the case that if you want to get rid of discrimination, you don't put in place a discriminatory feature that depends on the very evil that you say that you cannot abide.

So I think that what you say is absolutely true, and the courts; the Supreme Court particularly and the lower courts following the Supreme Court's lead, have now moved very directly in the direction of saying that preferences of the sort you've described are going to be unavailable except in the rarest of cases.

Senator HUMPHREY. Have I consumed 14 minutes and 49 seconds?

Senator SIMON. I don't believe you have consumed 14 minutes, but well over 10 minutes, Senator Humphrey.

Senator HUMPHREY. May I just have one follow up?

Senator SIMON. You may have one follow up.

Senator HUMPHREY. Thank you. The Chairman is a real gentleman, truly.

The question I wanted to ask was, apart from doing damage to the Constitution, as a practical political matter, wouldn't the pursuit of quotas and preferences undermine the now broad National consensus supporting the enforcement of genuine civil rights?

Mr. **Reynolds**. I think that's true; yes, and I also think that if we are going to buy into the idea that we can compromise the principle of nondiscrimination, the biggest losers in this country are going to be the very people we wish to protect; that we go to a system of proportional representation where that inevitably would lead us, that those who are in the minority and will necessarily wind up with the smallest proportion are going to be the ones who lose and they will not have a chance to get ahead and show that they can compete with everybody else on the same terms, based on their talent and their worth and their merit.

It seems to me that by challenging the notion that we can somehow give a helping hand by discriminating, what we have done is we have put people in a category of second class or lesser class citizens, and we have to move out of that and give everybody the same opportunities on a nondiscriminatory basis without compromising their principle of nondiscrimination.

Senator **Humphrey**. Just finally this last word. I congratulate you on your adherence to principal and the courage that you have displayed in the face of really vicious criticisms of your activities.

I thank the Chair.

Senator **Simon**. As the Chair I am going to bypass my turn temporarily, since Senator Kennedy has another meeting to attend. Senator Kennedy.

Senator **Kennedy**. Thank you, Mr. Chairman. I appreciate your accommodation.

Mr. Reynolds, in questions submitted by the committee, you were asked to estimate the percentage of your time devoted to activities other than those that are within your responsibilities as the Assistant Attorney General for the Civil Rights Division. You didn't provide such an estimate in your response. Would you do so at this time?

Mr. **Reynolds**. Well, I've given the best answer I can give on that, Senator. As I indicated, estimates of those kind vary from day to day and week to week and month to month; and I spent the time it takes to get the job done. It is in fact the case, it's closer to an 80-hour week than a 40-hour week.

Senator **Kennedy**. Well, are we supposed to assume, then, you spend half the time doing something other than work on the Civil Rights Division?

Mr. **Reynolds**. I don't think you can assume that. It depends on the day. Some days it's half, some days it's 100 percent, some days it's less than that.

Senator **Kennedy**. What are some of the other activities which you are involved in?

Mr. **Reynolds**. Well, there again, I was asked to list some, and I have in that letter; the Architectural Barriers Board takes a lot of time, dealing with accessibility questions, throughout the Government. Certainly drug related issues are a major area of interest.

Senator **Kennedy**. Would you describe your role in that?

Mr. **Reynolds**. Well, to say a role is probably going to be a little bit different than I would characterize it; I'm involved in helping the Attorney General and the different component of the Department to deal with the effort to come to grips with the drug problem on a number of fronts, on the demand front and the supply front, the interdiction front, the treatment front; and there are a number of activities that we're engaged in in a major way in the Department.

The Attorney General is head of the Drug Policy Board. He also has the leadership in terms of law enforcement in the area of this whole drug problem; and I'm involved in a number of things that touch on all of that activity.

Senator **Kennedy**. Do you want to continue? What besides the drug-related, what other kinds of activities?

Mr. **Reynolds**. Well, I have the Department Resources Board, which is a board that the Attorney General set up that deals with the whole question of the Department budget; and that's run through a process where all the components submit their budgetary needs, and those are reviewed by a board, and the Department budget is fashioned as a result of that considerable input.

The Iran Contra matters; certainly that consumed a considerable amount of my time. I was involved in the weekend investigation, which pulled together a lot of disparate ends—and presented to the President, and then to the country the essential outlines of the Iran matter, and have had, as a result of that activity, a number of follow-up matters that have been involved.

The judicial confirmation process is an area where I have had regular involvement.

Senator **Kennedy**. We will include the list on those. I was particularly interested in what your role was in fashioning, the shaping of the drug-related initiatives that you mentioned in there.

Mr. **Reynolds**. Well, again, I'm a participant in a number of the activities that we had been involved in in that area. You know, from the interdiction efforts, the DEA efforts, the drug testing efforts, et cetera.

Senator **Kennedy**. The reason that we raise this is because the Department's regulations provide that the associate Attorney General, the position for which you were rejected, shall "advise and assist the attorney general and the deputy attorney in formulating and implementing departmental policies pertaining to criminal matters."

They list those; it talks about Drug Enforcement Administration, Bureau of Prisons—it lists all of these various items in the regs. It seems clear to me that you have been exercising responsibilities that this committee had determined that you shouldn't be exercising. If advice and consent is to mean anything, it must mean that when the Senate withholds its consent to a nomination, the nominee can't just turn around and take a job without the title.

Mr. **Reynolds**. Well, the job of Counselor to the Attorney General is not one that requires confirmation of the Senate. I have no supervisory authority; the Criminal Division does do a lot in the drug area; so does the Civil Division, so does the Civil Rights Division, so does the Tax Division; and I think all of the assistant attorney generals have a role that we play in terms of the drug matters; the associate Attorney General sits as the vice chair of the Drug Policy Board and does a considerable amount of activity, and also has supervisory authority over a number of the components, and those are all matters that the Associate Attorney General performs, and performs extraordinarily well.

Senator KENNEDY. It points out, the associate Attorney General in formulating and implementing Department policies. And here, as we have seen in the earlier reference to your memoranda, your strategy, which was referred to earlier, have the overall, you have policy recommendations on drugs, on obscenity, career criminals, prisons, truth in the courtroom, capitol punishment, victims of crime.

So it is difficult for me to accept that you are not involved in Departmental policies pertaining to criminal matters. That is what was specifically the responsibilities of the job, for which you were recommended by the administration, and for which you were rejected by the U.S. Senate.

Mr. REYNOLDS. Well, actually, the Associate Attorney General would have had the civil side at the time you're talking about, Senator, but I understand your point. The Strategic Planning Board is one that has component heads that sit on it throughout the Department, and the associate is also involved, Steve Traut was involved at that time, and helped to formulate the matters that were formulated in that memorandum you're talking about, and so was Bill Weld very involved in it at the time; so I would not want it to be misunderstood that I was somehow leading a charge, that nobody else was on board——

Senator KENNEDY. The memorandum is self-explanatory, and it's advisory to all the other department heads, and it has references to those particular items which I've just referenced, and it's very clear that the Justice Department regulations, what they provide for, the Associate Attorney General. Those are matters which seems to me to fall clearly, which you have been very, very much involved in, in formulating the Departmental policies.

I can't remember a time when an individual has been rejected for confirmation for a particular job; whether it's been the Justice Department or otherwise, and undertake the responsibility of the very job the Senate has denied him. It really makes a sham of the whole process of advice and consent.

I think both your statements in response to questions and your comments earlier about prison, the prison population, what is going to be needed in terms of the future of prisons, the whole range of different responses that you have given to questioning clearly indicates that these, plus the memorandum, that this has been your major responsibility. And your own response in terms of what you are doing down there with regards to your time.

The other 40 hours a week that you are involved in all clearly fall into the pattern which I have outlined earlier, and I think that really does a disservice to the whole process and certainly to this committee.

Mr. REYNOLDS. Well, as I say, I think you misperceive the situation, but we can agree to disagree.

Senator KENNEDY. Mr. Chairman, Senator Simpson asked about the fair housing, the constitutionality of our ALJ provision. Could we have the statements of Professor Geoffrey Hazard of Yale Law

School, and the former Dean of Duke Law School, Paul Carrington, supporting the constitutionality of our ALJ provision put in the record at the appropriate spot as well?

Senator SIMON. They will be put in the record.

[The statements of Profs. Hazard and Carrington follow:]

PREPARED STATEMENT OF GEOFFREY C. HAZARD, JR.

STERLING PROFESSOR OF LAW, YALE LAW SCHOOL

My name is Geoffrey C. Hazard, Jr. I live in New Haven, Connecticut, and I am Sterling Professor of Law at Yale University. One of my principal fields of research, writing and teaching is Civil Procedure, including the legal and Constitutional aspects of jury trial.

I have studied S. 558, having particular regard for the validity of the provision under which claims based on violations may be prosecuted in an administrative proceeding before Administrative Law Judges as distinct from an Article III Court. The ALJ proceeding authorized by the bill would be brought by the Secretary as distinct from the aggrieved party, and may be brought only after the Secretary has considered invocation of a conciliation procedure. As an alternative, the aggrieved party may maintain a civil action in the District Court. In that alternative, the aggrieved party, rather than the Secretary, has control of the action. The remedies that may be granted under the two alternative procedures are substantially similar, including compensatory damages, punitive damages, and attorneys fees.

The question is whether the ALJ alternative, as it may be called, would be regarded as unconstitutional because it does not afford jury trial. In my opinion, the right enforcible through the ALJ alternative is sufficiently distinctive as to justify providing for its determination in an administrative tribunal. Congress can reasonably determine that there should be a remedial route that involves participation of the Secretary, with attendant control of the proceeding on his part, and the intercession of conciliation in appropriate cases. These are distinctly administrative processes, although of course it would be possible to provide them in an Article III proceeding. However, the point is that vesting prosecutorial authority in the

Secretary and providing for conciliation are uncharacteristic of "suits at common law," and it is to such suits that the jury trial guarantee of the Seventh Amendment applies. Given these characteristics of the remedial alternative that the bill consigns to ALJ adjudication, in my opinion the remedial arrangement would be governed by the Atlas Roofing decision and, accordingly, should be held to be constitutional.

My conclusion thus accords with that of Dean Carrington and Professors Rowe and Wolf. I have also read the memorandum submitted by the Washington Legal Foundation. This memorandum adduces policy considerations concerning the ALJ alternative that are entitled to serious delibration. On the constitutional issue, however, the argument it advances is strained and seems to me not to acknowledge the effect and continued force of the Atlas Roofing decision. The very awkwardness of the argument, therefore, suggests that its conclusion is incorrect. In any event, I believe the Supreme Court would sustain the validity of S. 558 as it stands.

It may be worth considering whether the remedial structure in the bill might be changed so that the remedies available through the ALJ alternative are compensation, attorneys fees and a civil penalty payable to the Government, rather than punitive damages payable to the aggrieved party. Such a modification obviously involves policy considerations, but it would further differentiate the ALJ alternative from civil action by the aggrieved party and thus bring it even more clearly under the ribric of Atlas Roofing.

TESTIMONY ON TITLE VIII AMENDMENTS, S. 558
Paul D. Carrington
June 4, 1987

My name is Paul D. Carrington. I have been teaching law, primarily in the field of Civil Procedure, since 1957. I am presently a professor and dean of the law school at Duke University. My scholarship over 30 years has touched on many aspects of the legal process and profession, and includes a systematic treatment of the constitutional right to jury trial in civil cases which was published last year as one of the major articles in the McMillan Encyclopedia of Constitutional Law edited by Levy and Karst. I have been asked to report to you on the Seventh Amendment aspects of S. 558.

I leave entirely to others the question of whether the present bill is necessary or desirable. I can fully support the aims of fair housing legislation, but I am not a student of fair housing law and have had no experience with its enforcement; hence, I am not qualified to express on opinion on the wisdom of these amendments.

I can say categorically that the present bill does not pose an issue of constitutional law. As amended, the law would provide for private enforcement by aggrieved individuals bringing civil actions in state or federal courts. The amended law does not limit the right to jury trial in such civil actions.

In the federal courts, such actions will be jury triable; in Curtis v. Loether, 415 U.S. 189 (1974), the Supreme Court held that a defendant in a civil action brought under Title VIII of the present Civil Rights Act is entitled to demand trial by jury, at least with respect to the plaintiff's claim for damages.

It is not certain, however, that a plaintiff or a defendant in a private enforcement action would be entitled to a jury trial if the action were brought in a state court. This would be a question to be resolved by reference to the law of the state in which the action is brought. This is so because the Seventh Amendment has no application to proceedings in state courts; it was so held by the Supreme Court in 1874 in Walker v. Sauvinet, and that decision has never been called into question. The Seventh Amendment is generally given as the primary demonstration that the Fourteenth Amendment, which does apply to state courts, does not incorporate all the provisions of the Bill of Rights, but only some. It is not a denial of the due process of law guaranteed by the Fourteenth Amendment if a state declines to provide a jury in civil cases, or in a particular class of civil cases. Presumably, the Congress of the United States could require a civil jury in actions brought in state court which arise under federal law, but Congress has never, so far as I know, not even in the Federal Employers' Liability Act, attempted to regulate state civil procedure in this way. Even Justice

Black, perhaps the leading exponent in this century of civil jury trial, acknowledged in an FELA case the power of a state to abolish civil jury trial altogether. See Dice v. Akron, Canton & Youngstown Railroad Co., 356 U.S. 525 (1958).

The new amendments would create yet a third forum in addition to the state and federal courts for the enforcement of the fair housing laws by creating an administrative forum within the Department of Housing and Urban Development. Just as the Seventh Amendment has no application to proceedings in state courts, it also has no application to proceedings in administrative agencies. The leading case establishing the inapplicability of the Seventh Amendment is NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), which affirmed that the Labor Board can enforce contracts as directed by Congress without conducting trial by jury. It is pertinent to note that the NLRB seemingly cannot itself conduct a jury trial that would conform to the requirements of the Seventh Amendment, nor could the Secretary of Housing and Urban Development; the conduct of a jury trial appears to require the presence of an Article III judge.

The holding in Jones & Laughlin was found to apply as well to bankruptcy proceedings in Katchen v. Landy, 382 U.S. 323 (1963); the Court there emphasized the practical considerations that made jury trial inappropriate to the exercise of summary jurisdiction by the bankruptcy court. The Jones & Laughlin case was distinguished by the Court in Curtis v. Loether, the Title VIII case previously mentioned, but with the Court again affirming that the Seventh Amendment does not apply to administrative proceedings. That position was reaffirmed in Pernell v. Southall Realty, 416 U.S. 363 (1974), and in Atlas Roofing Co. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977). It was reaffirmed yet again this year in Tull v. United States, 107 Sup.Ct. 1831, in a footnote in which the Court cites with approval the Atlas Roofing holding on the issue. The point seems, therefore, to be entirely settled: the Seventh Amendment has no application to administrative proceedings conducted under the aegis of the Secretary of Housing and Urban Development.

It may be helpful to the Committee to suggest what seems to be the underlying premise which guides these cases. To do so, it is useful to distinguish between the right to jury trial in civil cases under the Seventh Amendment and the right to jury trial in criminal cases under the Sixth Amendment. In criminal cases, the historic function of the jury is to serve as a bulwark against the executive and legislative arms of the government. That function of the jury is maintained today throughout the common law world and in legal systems based on Roman law as well. In civil cases, especially those involving private enforcement of the law, that function does not exist; it is perhaps for that reason that civil jury trial has been discontinued everywhere in the world except in the United States. We have kept the civil jury as a check not on the executive or the Congress, but as a check on the federal judge whose life tenure makes those officers suspect to those of us raised on the Populist traditions of this country. The function of the civil jury is to diffuse the otherwise autocratic power and authority of the judge.

This latter function, which largely explains the continued vitality of the civil jury in American courts, has little application to non-traditional civil proceedings such as those which occur in bankruptcy or in administrative forums such as that proposed for Title VIII. In these forums, power and authority are already divided. The administrative law judge may be distrusted, but he is subject to an array of accountabilities unknown to the United States District Judge, including appellate review by such a judge. The condition of autocracy which would bring the underlying values of the Seventh Amendment is not present; the right to jury trial therefore has no application.

Perhaps there are Senators who nevertheless favor jury trial even if it is not constitutionally required. Trial by jury in a civil case does get the community involved in public matters; it may be a means of assuring that community standards of morality are observed; it may provide a more gratifying experience for the litigants than trial before a single professional judge. On the other hand, there are plausible reasons to avoid trial by jury in civil cases: trials are longer and more expensive for both the parties and the system; particularly with six-person juries, outcomes are less predictable and settlement is therefore more difficult and less likely; law enforcement is a bit more erratic.

It is not my role today to weigh those competing considerations as they apply to fair housing cases. All that I say is that the choice is yours and the choice is not impeded by the Seventh Amendment so long as the alternative forum is an administrative agency, not an Article III court.

Senator **Kennedy**. My time is up. I thank the Chair for permitting me to question out of turn.

Senator **Simon**. Mr. Reynolds, we are developing a problem similar to a problem that existed in this Nation some decades ago, where Jewish Americans faced quotas; Asian Americans clearly have that problem now, in some universities.

Natt Douglas, head of the Educational Opportunities Section, met in March and April 1987 with parents of at least seven students who had not been admitted to the University of California at Berkeley, Yale and Stanford, but had very high grades.

In March of that year, Mr. Douglas reported that the Justice Department would study the materials presented and decide whether to initiate an investigation. In April he agreed to evaluate the cases and then make a determination whether to bring charges against the universities involved.

In May, he announced that the Justice Department would investigate. Since that time, there has been no action as far as we know either on these specific cases or in general on the problem. I am interested in whether there has been any leadership by your division on this problem.

Mr. **Reynolds**. Senator, as you asked the question I wanted to make sure I got it right. The matter you have raised is one I think of considerable concern, and I think it's of concern not only with regard to that university, but some other universities around the country.

The agency that primarily has the authority to deal with allegations and concerns of that sort is the Department of Education. Under Title IV of the Civil Rights Act, we need to get a written complaint from a parent before we can initiate or energize any kind of a law enforcement action.

So what we did in that instance is refer that matter over to the Department of Education to ask them to look at it; we can certainly take steps if we get a referral from the Department of Education back to initiate law enforcement activity.

The Department of Education is still reviewing it; in fact, we had some discussions with them as recently as I think a couple of weeks ago on exactly where they were on this matter. But at the present time, it's something that we have necessarily had to refer over to the Department of Education to have them do the preliminary inquiry into this matter, because we don't have the statutory authority, the way the civil rights laws are written, to go forward at this juncture on our own.

Senator **Simon**. How do you deal, in a general way, beyond specific complaints? Between the Justice Department, your Division and the Department of Education, is there any attempt to get the word out to the colleges and universities of this Nation?

Mr. **Reynolds**. One, we deal closely with the Office of Civil Rights of the Department of Education. They will deal directly with the university and with the different people in the university who have registered concerns along these lines, and they will do a full investigation of the matter; and when they reach their conclusions, if they feel it is something that deserves Department of Justice action, they will refer it back to us for us to move. But we have to await the conclusion of that process that they have in place under title VI.

Senator SIMON. I guess what I'm looking for is something just a little different; and that is, between your Department and the Department of Education, that you take action not only on these seven cases, or any individual cases, but that the word be sent out clearly and firmly to the colleges and universities of this Nation that this is in violation of the law.

Mr. REYNOLDS. Well, I think the Department of Education, it seems to me, has to deal with whatever there are in the way of specific allegations, wherever they arise, that are arguably even contrary to law. But in terms of a blanket statement that is put out, I think generally that is not the kind of thing that the Department of Education would release.

As we all know, there are questions that are raised about these kinds of activities by the universities; they have an argument as to why they think they can do it. There are arguments as to why others think they cannot do it, and until that gets sorted out and all the facts are in place, it's hard to fashion a comprehensive statement that says, this is or is not something that one can do.

I've got concerns about this, but the information that's being collected is not yet sufficient for us to send out a blanket statement to anybody about this particular instance.

Senator SIMON. Let me ask, then, a more general question. Do you believe if a college or university has a quota in saying, "We won't accept more than X-number of Asian Americans, more than X-number of Jewish Americans," that that's in violation of the law?

Mr. REYNOLDS. I thought I had made that clear to everybody in the country. Any school that is using a quota, whether it's race, Asian American, a nationality, Jewish, is in violation of the law. And I would join you, if you want, in sending out a statement that says that if you are using quotas in the enrollment process, you're violating the law and you'd better stop tomorrow. I would welcome that as a joint statement that we both could make; and I have no qualms about that.

It seems to me that that is a message that we have put out and put out loud and clearly, over and over again. I think that what you have with the situation that you raise specifically is a question of complaints that have to be sorted through and searched out; and made sure where they fall in terms of the practice.

But if you're asking about that kind of a statement, yes. I thought we had made that.

Senator SIMON. Let me shift to another area, then. That is the civil rights of institutionalized persons and the enforcement of that Act. We have 581,000 people in prison. We have 1.7 million people in nursing homes.

In 1987, you received 1378 complaints regarding these people in institutions. There were seven investigations undertaken, according to my information. That hardly seems like an adequate response.

Mr. REYNOLDS. Well, I don't have all the complaints or the nature of them. I can say this; that with regard to that section in the Division, I have never seen a more dedicated group of lawyers. They are dealing with the most wrenching kinds of concerns that we have in this country under the Civil Rights Division, and they go after them with a vengeance.

I am willing to tell you in absolute terms, without any kind of reservation or equivocation that the job that is being done by those lawyers in searching out and ferreting out the complaints that come to them is absolutely the best that is being done by any lawyers in the Department of Justice.

We have, as you well know, Senator, a limited amount of resources. We can do so much with what we have, and we do more. But I would have to say that as far as the effort that is expended by that group, that you could ask no more of any group of people and you could expect no more. They are really doing a tremendous job and searching out the complaints.

There are I am sure a number of complaints that are not ones that pan out; there are probably a number of complaints that relate to a single institution. There are a whole set of procedures in the statutes that are in place that require hurdles to be cleared before you can initiate or launch one of these investigations; there is some resistance at the State level that require us to go through a number of hurdles before we can actually get something rolling.

I don't know how that impacts on those particular figures, but I am confident that we are doing all we can do with the resources we have in that section.

Senator SIMON. Now my information is there are 13 lawyers in that division; there are three vacancies and that the estimate is that there will be six investigations this year. Now, the nursing home population is obviously growing.

Mr. REYNOLDS. We have only a limited ability to do nursing homes, by the way. If it's a private nursing home, the statute is one that doesn't allow us to reach that.

We have limited jurisdiction with regard to the nursing homes, that we are able—if it's a private nursing home, then that's not one that the statute gives us the authority to go after under CRIPA.

Senator SIMON. If the law needs to be modified in any way, to give you greater authority to more effectively do the job that needs to be done, I would be interested in knowing that. If your people have any suggestions for changing the law in that regard, I would be interested in having those suggestions.

Mr. REYNOLDS. What the law does is require us to go to these various institutions to determine if there are constitutional violations. And when you get into a private nursing home, you are out of the realm where you can use the Constitution as a lynch pin.

CRIPA is not a self-generating statute. It is simply an implementing statute that allows you to operate to enforce other existing laws that are out there; and because it is tied to constitutional problems or Federal statutory problems that impact basically on Federally-funded programs, if a nursing home is not a public facility or it does not receive Federal funds, we don't have the authority to go after it. The statute could be changed, but it would be a rather dramatic change, is all I'm suggesting to you.

But that is why I indicated to you in the nursing home area we have a limited—there really are a limited number of nursing homes that fit into the public or Federally-funded category.

Senator SIMON. When you say Federally-funded, if it is Federally-funded in terms of medicare patients, does that permit you to go in? Every nursing home I know of has medicare patients.

Mr. REYNOLDS. We are going to have to look at that, I think, with the change in the law that you just passed under the restoration act, and see whether opens doors that were not open before.

Senator SIMON. I would be interested in receiving information on that.

Now I'd like your comments on the question that Senator Kennedy asked about your going in without consulting with the schools, without consulting with the black parents who brought litigation. Clearly that has happened in some Georgia cases.

Mr. REYNOLDS. Well, we consulted with the schools, and we gave notice and asked for the black parents to come in and tell us to react to it, tell us what the problems were. We had a two-fold purpose here.

One purpose was to remove the court decree where all the discrimination had been cured and the vestiges of discrimination had been eliminated, and to give back to the school authorities the ability to run the schools, but the other was also to focus on a number of school districts that everybody was content not to focus on.

So it was a two fold purpose. What we did is we did contact the school districts before we move forward on this, and then we also gave notice to the plaintiffs in the customary fashion—the Senator said it was not—but in the customary fashion by indicating to them that we thought this was something, this was a court decree that could be removed; but if they had any reason that it shouldn't, they have every ability to come in and advise us what the problems are.

Senator SIMON. As I understand, some of the schools have disassociated themselves from your requests?

Mr. REYNOLDS. I think there are some that have suggested to us that they really would rather not go through with this as the first wave, if indeed they are going to have to go back and answer interrogatories that call on them to bring out records 17 years old and tell who was in what class, and who was in what classroom, and what happened when, over the course of the last 17 years.

Their view is that that is terribly burdensome and disruptive of their process, and if indeed that's going to be required, that they would rather not do it. We are in a stage now where we've gone to the court to see how much of that really needs to be done.

There has been one indication from one court that feels that that's not something that is appropriate, but there is still an open question in the Georgia court. And I think that there are some school districts that say if that's what's going to be involved in this process, we would rather not be the ones that are spending that much money.

Senator SIMON. I guess what I think would be the intent of this committee and I would hope what the Justice Department would do would be to consult with, not simply notify, the schools and the plaintiff-parents.

Mr. REYNOLDS. Well, we have had several meetings with the NAACP and other civil rights groups. We've sat down and consulted with them; we worked out a process that I think now they are comfortable with.

Senator SIMON. And from now on the consultation will take place?

Mr. REYNOLDS. In terms of moving forward with this, yes. That's right. In terms of, we've got the program sort of launched, and we're moving forward with it, and we're going to move forward with it on a number of fronts in different States, and we are going to certainly be consulting with them, and have consulted with them on what our plans are.

Senator SIMON. In the fair housing field, in the 88 months from the start of this administration, there have been 78 cases filed. This is less than one per month for a staff of 33 with 18 lawyers.

In the past year, your housing-civil rights enforcement section has filed 25 cases; 17 of them Fair Housing Act cases in 11 States.

Yet HUD information indicates that 72 percent of blacks who try to rent are discriminated against, 48 percent of those who try to purchase a home are discriminated against.

What do we do to beef this up?

Mr. REYNOLDS. Well, I think that the passing of the Fair Housing Act is certainly necessary. Let me just say initially that our jurisdiction again, there is pattern and practice jurisdiction. One of the proposals in the Fair Housing Act is to expand our jurisdiction in that regard.

HUD has the authority to deal with most of the kinds of racial discrimination cases you just mentioned where it is a single family or single member situation; and they have extraordinary numbers that they are dealing with in that area.

But I think that you can give the Department of Justice more enforcement muscle, and I think that that would help. Obviously you need more resources. We have 33 lawyers; we initiate 25 cases, and you've got to see them through. You have got to negotiate it, you have got to try them. We have a huge case, the Yonkers case up in Yonkers, New York now, which is taking up a vast amount of resources out of that section just to continue to with the activity in that case; and so we, you know, it's sort of the same response that I think you get across the board.

We do all we can and more with what we have, and I think that if we had some more enforcement authority, that the Department of Justice probably could reach out and get more of these kinds of problems than we can under just the pattern of practice authority we have.

Senator SIMON. Well, I hope we can pass a fair housing bill soon. In terms of enforcement authority, HUD has no enforcement authority at the present time?

Mr. REYNOLDS. Well, they don't have any enforcement authority in the courts, but they have the ability to conciliate these, and they also have the ability to refer them out to the States which have a process similar to the ones that the Federal Government has. And I think it's something like 38 or 39 States where you can make that referral, and an awful lot of the cases that they have go in and are referred out.

We get referrals over from HUD on pattern of practice cases, and then there are private cases for individual ones.

I would like it very much of the Department of Justice were given the authority to prosecute individual cases. We can't do it now, and that's been a limitation.

Senator SIMON. Well, I hope we can remedy that.

Two final questions here. First, in your Philadelphia speech, you questioned the constitutionality of oversight hearings. You know, we can pass laws, but if we do not have the ability to have an oversight hearing, agencies can just ignore the intent of the law.

I have learned over the years here on Capitol Hill that things happen when we have oversight hearings; the law suddenly gets enforced a little more. We get action from agencies that aren't moving, aren't paying any attention to the law.

What is the basis of your questioning the constitutionality of oversight hearings?

Mr. REYNOLDS. I think that an oversight hearing of this sort, if we want to call it that, is certainly proper and appropriate for Congress to hold, and to make the judgement as to the funding requirements based on what is happening.

I think what we have had is quite an abuse of that by Congress; which labels sort of anything and everything as coming under its oversight umbrella and then we get—for example, we get committee hearings on specific cases, and how they were handled and whether or not Congress agrees or doesn't agree with a particular settlement or particular way a case is prosecuted. I think that moves you far beyond what would have traditionally been contemplated as a legitimate oversight kind of an activity by Congress where it is totally unrelated to the funding question; but is simply second guessing the activities that are going on either at the Department of Justice or Department of Education or what have you.

So I think that it depends on how it is conducted and what its focus is, and I think that Congress has been allowed, if you will, to basically be quite casual in its oversight activity, and sort of yell oversight and call anybody up to look any anything they want to look at at any time.

I think that, if tested, probably would have some constitutional problems. My guess is that it would not be something you could get as a case in controversy in the courts, so it probably won't be tested.

Senator SIMON. The second guessing, and even when we're wrong in that second guessing; I guess I don't see the basis for it being unconstitutional.

Mr. REYNOLDS. Well, there is a role that the Constitution assigns to Congress, to legislate, and to deal with their legislative activities, the government; not to regulate, for example, which is why Chada came down and said the one-house veto is unconstitutional; not to prosecute, that is the job of the Department of Justice; and I think that those lines are fuzzed up considerably and that Congress has crossed them in a way that probably is far beyond anything that is contemplated within the constitutional authority to enact laws and make laws.

Senator SIMON. Then one final question that really gets to kind of a philosophy of how you administer the Civil Rights Division. In your Philadelphia speech, you say, you talk about—let me read the full paragraph:

> The portrayal of activist courts as defenders of liberty against a relentlessly hostile intrusive government is thus a gross distortion, and that distortion is compounded by the argument advanced by Senator Simon and others during the Bork hearings that a judicially-created increase in the liberty of one inevitably increases the liberty of all.

Let me read a little exchange that I had with Judge Bork, and I am skipping here, but I don't think I'm taking anything out of context. I'm speaking:

"At a speech at Berkeley in 1985 you"—that is Judge Bork—"say—I would be interested in any comments you have here—what a court adds to one person's constitutional rights it subtracts from the rights of others." That's a quotation.

"Do you believe that is always true?"

Judge Bork: "Yes, Senator, I think it's a matter of plain arithmetic."

Then there is further exchange. Then I say: "But that arithmetic equation isn't always quite true. In other words, if you give slaves freedom, I suppose, using your analogy, you then take away the freedom of slave owners."

Judge Bork: "That is a redistribution of liberties commanded by the 13th Amendment to the Constitution."

Then, and this is a full day later, now, and I'm questioning him again, and we get on to the same question. I say: "I have long thought that it is kind of fundamental in our society that when you expand the liberty of any of us you expand the liberty of all of us."

Judge Bork: "I think, Senator, that is not correct."

Now, you, in your speech, identify with Judge Bork in relation to this. I guess I really want someone in charge of civil rights who really believes that by defending the rights, and expanding the rights and liberties and opportunities of people that we are not taking rights and liberties away from others. By living the spirit of our constitution, we really are doing something very important for this country and our future. Any comments?

Mr. REYNOLDS. Well, Senator, I do think that we do have some fundamental constitutional rights that are available to everybody and that they should not be denied to anybody. And those rights that are embedded in the Constitution, it seems to me, should not be compromised anywhere along the line.

I think that beyond that, however, that while it may be nice to believe that if you expand the rights that are out there for anybody expand it for everybody, it just isn't so. And I am not sure it is going to make it so just because you have somebody sitting in the Civil Rights Division who believes it.

The fact of the matter is that if you are going to expand rights; for example, if you take the quotas which you are saying is going to enhance the ability of a certain group of people who have preferred status, you are going to deny other people, because of their skin color, the ability to have those opportunities. That is not expanding the rights of everybody. That does indeed, as you have described it, fit your model; but it also is absolutely the case, as Judge Bork has suggested, that you will not be able to assert, with any accuracy that expands the rights of everybody.

My sense is that where there is some overlap, if you will, is where you identify constitutional rights. I think that is absolutely right and I agree with—I think that this is what you say, you believe very strongly; and I do, too, that those rights cannot be denied to anybody, and everybody is entitled to those rights.

But I think that in other areas when you are talking about statutory or judicially crafted rights that are assigned to benefit a certain group in our society that it is the case, as Judge Bork said, that there are other groups in our society who are going to suffer for it; and that that is the reality.

I think the thing that is important is that you appreciate, for example—I'll give you an example—you appreciate, if you were sitting in the seat I'm sitting in, that if you are going to deal with a preference for blacks, it may well pinch on the preference for Asians or for other groups in this country.

You gave me the example of the quota discrimination problem with Asians. The problem comes up because there is a certain set of slots set aside for minorities and the concern is that Asians are grabbing too many of the slots and leaving too few to other people; and so we have to put a lid on the number of Asians who get these slots.

Or take the *Starret City* case in the housing arena, where we came in and challenged ceiling quotas; blacks could only fill a certain number of the housing units, and if they filled any more, it would tip the whole housing unit into a predominantly minority situation, so we couldn't let them, we had to hold vacant for whites certain units that were in the complex.

Now the fact of the matter is that if you are going to say that we'll assign to a certain group or give expansive rights to a certain group, it's going to come down and hit hard on other groups. And I think that we generally find in this scheme of things that the ones who suffer the most are the minorities.

But I side with Judge Bork in that regard, except that I do say that I think that when you are dealing with fundamental constitutional rights, you cannot deny them to anybody.

Senator SIMON. While you are using illustrations, let me use one. Here's a plant that employs 1,000 people, yet employs no blacks. And it is very clear there is a pattern of discrimination. I would like to believe that when you open up that plant to see to it that they give opportunities to blacks, you're not just helping ten blacks who may get jobs, you're helping our whole society, you're helping everyone.

It's not this careful balance that is suggested that if you give rights to somebody, you're taking them away from somebody else.

Mr. REYNOLDS. I think you have to open up that plant; I think you have to give opportunities, but I don't limit it to ten. I say that you open the door, and if you have the whole plant that is going to become black because on merit all the blacks get the jobs, you ought to give them all the jobs. I don't resist opening the plant at all.

What I resist is opening the door only a crack and letting ten in, and then slamming the door in the face of all the other blacks who have the ability and the talent to get through the door.

So I am all for opening that door of equal opportunity, but we have shown by moving away from this notion of rigid numerical remedies and saying that you go out and you recruit like crazy for blacks and other minorities or for women, and you bring them in and you allow them to compete on an equal basis, we have found that you have a greater number than people I guess in the Seventies ever anticipated.

You have a greater number of blacks and minorities who walk through that door, and not only do they get through the door but their upward mobility is greatly improved because they are coming in on merit and they can compete. And you put in an affirmative action training program so that you can allow them to be competitive on the way up.

Now that to me is the way to deal with that problem, and it seems to me that that does not deny any group any rights that they have. They can compete just as openly and just as rigorously, and I am not saying that I am going to say ten slots are going to be reserved for this group, so there are ten less for them.

I don't disagree with your end result; I am just saying that I think that the means that you go about doing it is one that ought to be sensitive to making sure that everybody's rights are protected.

Senator SIMON. I think there is a distinct difference between a floor and a ceiling. But you use the phrase, affirmative action. Do you really believe in the bottom of your heart in affirmative action?

Mr. REYNOLDS. I believe in affirmative action that is non-discriminatory. Absolutely.

Senator SIMON. Affirmative action that is nondiscriminatory.

Mr. REYNOLDS. Absolutely.

What I don't believe in is affirmative action that discriminates; because I think it's oxymoronic; I think it's a contradiction of terms. I don't think that you can have action that discriminates that is affirmative.

Senator SIMON. All right. I run a plant. I have a thousand people working there, and I ask for people who apply. A hundred people apply who are qualified, who meet the qualifications; 30 are black, 70 are white.

Do you believe that that plant ought to be taking steps to provide opportunities it ought to be integrating in its work force?

Mr. REYNOLDS. Sure.

Senator SIMON. Do you believe it strongly?

Mr. REYNOLDS. Yes. And I believe that it ought to open that application role up to all those that apply and to take everybody in who is qualified. I would do it on the basis of merit and qualifications.

Senator SIMON. You recognize also that because we have had a history of discrimination that there are some that are going to need a little extra help along the way?

Mr. REYNOLDS. I think that's right. But I don't think you're helping them if you select by race. I mean that points up what is a core problem, that you are blinking at and putting a bandaid over if you say "we're going to pick by race at the employment line."

The problem you're pointing up is that there's been an educational disservice that has gone on before you get there, and that the people who come up into the pool are less well equipped to compete than other people. That's a core problem in this country, and we ought to face it for what it is, and we ought to treat that problem as an educational problem.

You don't solve that problem by saying "I'm going to allow X number of blacks through the door in order to balance my work force." You solve that problem by putting in place an affirmative action training program that allows all of those who want to get the training to do it, black and white.

But I don't think that you are doing a service to the problem that you have identified if your cure is to select the employment door on the basis of race. The problem that you've identified is one that preceded the time that anybody got into that employment line, and it's not going to be solved by letting a certain number, whatever that number is, through the door because of their skin color.

It's got to be solved by coming to grips with that problem and dealing with the training and education that is needed so that they can be competitive.

Senator **Simon**. Or is there a possibility that you have to do both? You provide that lift. And, because for so many decades in this country people have been picked on the basis of race, you're going to have to stretch yourselves just a little bit to remedy that, and there may be some selection on the basis of race, not of people who aren't qualified, but so that you really show that our society is the kind of society that provides opportunity for all.

Mr. **Reynolds**. Well, that gets us I guess all the way full circle. We ran that gamut in 1970, the process stalled out, and we wound up doing I think more damage than good to the people that we are saying that we want to serve.

I think that what you have to do is to come to grips with what is a real problem out there; it's an educational problem that we're not treating very well and we're blinking at; and my sense is that if you're going to, if you're going to deal with the long term effects that you are concerned about and I certainly am concerned about, it's not going to be cured by latching on to a quick fix that deals with, that leans on discrimination, that promotes discrimination, that buys into discrimination; that says that the very evil that we have condemned and that got us here is now okay to get us out of it.

Because I just don't think it's going to happen, and I think what you're going to wind up doing is worse of a disservice than what you do if you come to grips with the hard problems, and say "Let's treat the core problems where they are, let's put in remedies that deal with those, and then let's get people an opportunity to show their stuff and give them the training, and to have a real affirmative action program that is nondiscriminatory".

Senator **Simon**. I do not believe there is any such thing as a quick fix, to use your phrase; but I don't want too slow a fix, either.

Mr. **Reynolds**. I appreciate that.

Senator, can I ask one question before we adjourn, because, and I'm sorry he's not here, but Senator Metzenbaum went through a dissertation that does seem to me called in my integrity. There is another half of the record that he did to see fit to make available. I would like an opportunity to complete the record by responding in writing to his assertions.

Senator **Simon**. The record will be kept open for that. Also, some of my colleagues I think will have additional questions we would like answered for the record.

[See appendix.]

Mr. **Reynolds**. Thank you very much.

Senator **Simon**. Thank you. The hearing stands adjourned.

[Whereupon, at 4:34 p.m., the committee adjourned subject to the call of the Chair.]

APPENDIX

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 26, 1988

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to a series of questions posed by members of the Committee relating to the recent hearing on the Criminal Division's budget request for fiscal year 1989.

I would be pleased to provide any further information in which the Committee may be interested.

Sincerely,

Tm Boyd

Thomas M. Boyd
Acting Assistant Attorney General

Enclosures

Questions from Senator DeConcini

Question: I am also interested in asset forfeiture. I would like to know how the division is attempting to reduce the processing time for administrative and judicial forfeiture.

Answer: Sharing applications are being processed more expeditiously than ever before. Currantly, the Federal Bureau of Investigation (FBI) processes administrative forfeitures and the related sharing in an average of 150 days. Last year at this time, the FBI took 340 days to process an administrative forfeiture. Similarly, the Drug Enforcement Administration completes and administrative forfeiture and sharing in an average of 160 days. They have 3,300 cases waiting for processing. This is a vast improvement over 1987 figures where DEA took 350 days on average to process a forfeiture action and had a 9,500 case backlog.

The processing time for a judicial forfeiture equitable sharing request is directly dependent upon the court proceedings. The average time for a civil forfeiture action to be completed is 18 months. Upon receipt of the forfeiture order from the United States Attorney, the Asset Forfeiture Office works expeditiously to process the associated paperwork and forward it to the U.S. Marshals Service so the property can be disbursed. If the forfeiture involves currency, the sharing generally takes place within four to six weeks after a forfeiture order is entered. When other property is involved, however, the actual disbursement may take longer, since the property often needs to be disposed of or sold.

__Question__: Do you know offhand what the increase request was for that program (OCEDEF)? Can you supply that for us?

__Answer__: The attached chart provides information concerning requested increases for the OCEDEF Program for fiscal year 1989, as well as information concerning resources for fiscal years 1983-1988. The chart does not include any additional resources that may be provided as a result of the pending drug bills.

ORGANIZED CRIME DRUG ENFORCEMENT
1983-1989
(Dollars in thousands)

ORGANIZATION	1983 Actual			1984 Actual			1985 Actual/A			1986 Actual			1987 Actual			1988 as Enacted			1989 Request to Congress		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Drug Enforcement Administration	337	168	$24,729	337	323	$30,609	762	711	$50,252	771	750	$51,568	762	799	$58,140	762	749	$62,283	762	749	$63,590
Federal Bureau of Investigation/B	411	206	50,839	411	395	35,286	854	818	47,074	814	778	46,749	871	814	47,713	578	578	46,462	578	578	50,318
State/local overtime	...	...	1,628	...	...	3,224	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
U.S. Attorneys	340	165	9,026	340	326	17,454	519	316	20,594	519	411	25,892	519	457	29,738	519	484	32,016	619	551	37,105
U.S. Marshals Service/C	12	6	657	12	12	575	13	13	688	13	13	665	13	13	735	13	13	895	13	13	920
Support of U.S. Prisoners	...	...	5,000	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Federal Prison System	10	5	5,756	7	7	7,860	...	...	249	...	...	...	...	...	4,213	...	...	...	...	...	...
Criminal Division	...	...	...	...	...	...	6	6	616	6	6	583	6	6	593	6	6	623	6	6	631
Tax Division	...	...	137	...	...	...	9	8	520	9	8	653	14	12	742	14	13	921	14	13	965
Internal Revenue Service/D	220	110	5,595	431	431	18,900	435	435	21,100	442	442	24,100	631	595	29,000	631	595	30,200	631	595	31,300
Bureau of Alcohol, Tobacco & Firearms/D&E	80	40	2,035	80	80	6,018	101	101	7,100	119	119	7,469	149	149	11,052	118	118	8,202	118	118	8,860
U.S. Customs Service/D	200	100	5,086	200	200	14,434	226	226	15,200	226	226	14,200	226	226	14,368	226	226	14,732	226	226	14,732
U.S. Coast Guard	...	...	2,000	10	10	686	10	10	707	10	10	728	10	10	750	10	10	766	10	10	798
President's Commission on Organized Crime	20	...	209	20	14	1,622	20	20	2,178	20	4	951	...	...	...	...	...	...	...	...	...
Governors Project	...	...	22	...	...	98	...	...	78	...	...	99	...	...	...	...	...	100	...	...	100
Annual Report	...	...	10	...	...	98	...	...	109	...	...	100	...	...	100	...	...	100	...	...	100
TOTAL	1,630	800	112,729	1,848	1,798	136,864	2,955	2,664	166,465	2,949	2,767	173,757	3,201	3,081	197,144	2,877	2,792	197,300	2,977	2,859	209,419

/A In 1985, resources for participating OCDE agencies were transferred to the individual agencies. Funds for the Governors Project and the Annual Report are located in the General Administration appropriation. Only resources associated with the President's Commission on Organized Crime are retained in the 1985 OCDE appropriation.

/B The FBI has historically overburned personnel resources in the OCDE program. This accounts for the decrease in positions and FTE from 1987 actual to 1988 enacted.

/C Beginning in 1987, OCDE resources in the U.S. Marshals Service are distributed among three operational programs as well as the OCDE program.

/D The IRS, BATF and Customs Service do not show OCDE funding as a separate line item in their budgets. The dollar amounts shown for these agencies represent estimates of the resources associated with their OCDE participation. In addition, the dollar amounts identified for 1985 and 1986 include resources approved by OMB in support of the Florida/Caribbean Task Force.

/E Increase in resources assigned by BATF to the OCDE program in 1987 was due to a one-time reprogramming.

18-Apr-88
09:30 AM

Question: If I wanted to know why there were shortages in certain areas, particularly in south Florida, how would I find that information out? . . . Can you find that out for us and supply it for the record? . . . I think that they are down from 108 or 110 U.S. Attorneys there to something like 94 or 95, and I certainly would like, for the record and for Senator Graham, to have that information supplied for the record, if you would.

Answer: I understand that on May 24, 1988, representatives of the Department met with Senator Graham's staff to discuss attorney staffing in the three Florida districts. The following information relative to attorney staffing/allocations was provided at that time:

Florida Districts	FY 1976	FY 1981	FY 1983	FY 1985	FY 1988
Northern	5	8	13	16	17
Middle	20	33	39	48	49
Southern	30	59	75	102	103
Total all Fla. Dists.	55	100	127	166	169
Total all 94 Dists.	1,490	1,873	2,219	2,403	2,607

Percent AUSA Increase FY 1976 Through 1988

Total in three Florida Districts: +207%

Total in all 94 Districts: + 74%

As indicated in the data provided to Senator Graham's Office, the attorney staffing level in the three Florida districts has increased by 207 percent since FY 1976 while attorney staffing in all 94 districts increased by only 74 percent during the same period. It is noted that the major growth came early in this Administration in response to heavy increases in caseloads related to drug trafficking, immigration and other problems.

Question: **My question is do you see any reason why the local prosecutor, if they are doing the work prosecuting the case, should not be able to share in the forfeiture assets? Is legislation necessary? . . . Well, what I would like to know is whether or not, in your judgment, legislation is necessary, and if so, would the administration take a position in support of that.**

Answer: **The applicable rule regarding direct transfers to state and local prosecutors' offices is as follows:**

> Investigative work performed by district attorney or state attorney general personnel (including work done by police personnel detailed to prosecutors' offices) will be considered in calculating equitable shares. A state or local prosecutor's office is eligible for transfers of forfeited property based on such investigative effort in the case, to the extent such an office is allowed to receive money directly from the federal government or have such monies credited to its budget under state or local law. Section III.D.4.d of The Attorney General's Guidelines on Seized and Forfeited Property Guidelines on Seized and Forfeited Property (Guidelines), signed by the Attorney General on April 9, 1987.

Most work performed by attorney personnel in state and local prosecutors' offices is typically not investigative in nature. Therefore, such work, like that of their federal counterparts, should not be the basis for an equitable share going directly to such offices. Legislation is not required to permit the sharing of forfeited property with state and local prosecutors; however, we believe that this policy is consistent with the legislative intent to encourage joint investigations to identify major drug traffickers and seize their assets, and is in accord with the Department's policy regarding the exclusion of federal cooperative law enforcment efforts.

Question: In your written statement, you have mentioned that in 1987 the Criminal Division's expanded efforts contributed to the total asset forfeiture income of $177 million. Of that $177 million, how much is attributed to the Criminal Division?

Answer: It would be difficult, if not impossible, to determine the total income which would be attributed to the Division. The Asset Forfeiture Office (AFO) of the Criminal Division provides a myriad of legal assistance and support in the prosecution of asset forfeiture cases both directly and indirectly. AFO plays a key role: leading and assisting U.S. Attorneys in the prosecution of complex forfeiture cases and related business law matters; training members of the criminal justice community in forfeiture law; and providing expertise to the Department of State and the Drug Enforcment Administration (DEA) in their plans to cooperate with foreign governments in forfeiting and sharing assets acquired or used in international drug trafficking. Thus, the Office has a significant role to play in not only the direct prosecution of cases but in providing the tools and expertise needed by other offices. Direct AFO assistance has resulted in the forfeiture of property worth tens of millions of dollars, as evidenced by the following examples.

Operation Man - AFO recently concluded the litigation of numerous civil forfeiture proceedings in the Southern District of Florida relating to DEA's investigation of a vast money laundering operation. AFO's efforts led to the forfeiture of over $10 million worth of drug-related assets.

United States v. Bilton, et al., Case No. CR-86-873 (S.D. Fla.) - AFO is handling the criminal forfeiture matters relating to the prosecution of eleven defendants involved in a RICO drug conspiracy. Of special interest is the forfeiture of approximately $800,000 in the Bank of Ireland in London.

Operation Pisces - AFO is still involved in litigation concerning this very successful DEA operation in the Southern District of Florida. AFO's efforts have already led to the forfeiture of over twenty million dollars worth of cash, jewelry and aircraft to the United States and Panama.

United States v. Miscellaneous Jewelry, et al., Docket No. (4th Cir.) - AFO recently concluded the successful civil prosecution of over $1.5 million dollars worth of real and personal property representing the illegal drug profits of Denny White in Maryland. AFO is now handling the appeal of the case, which involves several issues of importance to our overall forfeiture program.

Question: I would like to know, also, as long as you are doing that, what is the increase for 1986 to 1987 and if you have any predictions of what you think the income for 1988 asset forfeiture efforts made to the Division--I would like to know if you do any of that kind of projection?

Answer: For Fiscal Year 1986, $93.7 million was the total income derived from forfeited currency and proceeds from the sale of forfeited property. For Fiscal Year 1987, total income was $177.6 million. For the current fiscal year, we estimate total income will be $200 million. As of June 30, 1988, $147.2 million had been realized.

Question: Can you submit a statement as to your assessment of this legislation (S.2033, Child Protection an Obscenity Enforcement Act) prior to the June 8th hearing, and whether or not it would be of assistance in your judgment, in this area?

Answer: The goal of this proposed legislation is twofold: first, to update the law to take into account technologies newly utilized by the pornography industry; and second, to remove the loopholes and weaknesses in existing federal law which have given criminals in this area the upper hand for far too long.

In the last several years, distributors of obscenity and child pornography have expanded into new areas. They are employing new technologies and reaching new audiences. This is how any business grows and develops, except this business is illegal.

Yet under current federal law some very basic tools are being withheld -- tools which have long been available to prosecutors of other crimes. The Child Protection and Obscenity Enforcement Act will give prosecutors the tools they need to get the job done efficiently, fairly, and thoroughly. The producers and distributors of this material have had a huge legal advantage, and they have used it to the fullest. They have also employed the latest technologies, while federal law has failed to keep pace.

This Act will bolster the unprecedented efforts already underway to eliminate child pornography, remove obscenity from the open market, and dismantle the criminal organizations which produce and traffic in this illegal and harmful material.

Question: Of the 40-50 cases screened per month by the Defense Procurement Fraud Unit, how many have been prosecuted through trial or plea-bargained out? Can you supply for the record how many have been prosecuted on a criminal basis and what the successful prosecution rate is and what the sentences are, if they have been sentenced, since the beginning of the program.

Answer: In responding to this question, it is important to show the number of matters screened as well as the disposition of these cases. It would be a mistake, however to compare the cases brought to the Unit for screening purposes to the number of matters prosecuted in evaluating the resources assigned to the Unit. The Unit in most instances, screens a case at a very early stage when little if any investigation has been done. At this stage, the Unit makes a decision to accept a case, decline it, refer it for further investigative work, or take it to a United States Attorney Office. For Fiscal Years 1987 and 1988, the following information is provided regarding matters screened and the results of the screening:

FISCAL YEAR 1987

MATTERS SCREENED		Quantity
Product Substitution		71
Accounting Fraud		
Mischarging	83	
Defective Pricing	76	
Progress Payment	43	
False Claims	52	
Subtotal		254
Corruption/Gratuities/ Bribery		47
Kickbacks/Bid Rigging/ Other		48
Miscellaneous		5
Total		425

RESULTS OF SCREENING	Quantity
New Matters Accepted	28
Returned to Agency for Further Work	68
Sent to U.S. Attorney's Office	208
Declined	123
Total	425

FISCAL YEAR 1988

TYPE	Quantity	
Product Substitution		58
Accounting Fraud		
Cost Mischarging	34	
Defective Pricing	25	
Progress Payment	25	
False Claims	31	
Subtotal		133
Corruption/Gratuities/ Bribery		30
Kickbacks/Bid Rigging/ Other		44
Miscellaneous		6
Total		271

RESULTS OF SCREENING	Quantity
New Matters Accepted	13
Returned to Agency for Further Work	65
Sent to U.S. Attorney's Office	149
Declined	44
Total	271

In Fiscal Year 1987, the Unit initiated 28 new cases/investigations. In addition, the Unit had 7 cases where an information/indictment was returned. This resulted in 4 convictions and 1 acquittal to date. Two cases are still pending trial. The Unit also obtained $725,500 in recoveries.

Thus far in Fiscal Year 1988, the Unit initiated or accepted 13 new investigations/cases. In addition, the Unit has returned information/indictments in 5 cases (2 Defective Pricing and 3 Kickbacks), which have all resulted in convictions through guilty pleas. The Unit has also obtained the following monetary recoveries:

Recoveries (fines, civil and criminal penalties, restitution)	$31,576,590
Cost Savings (attorneys fees and associated costs)	$10,818,406

Questions from Senator Grassley

Question: Could you provide us with statistics--and if you can here today, okay, but if you cannot, then I mean for the record--to show that the present full-time equivalent positions within the Division and those that you propose to add now save and will save more taxpayers' money than is spent to support these positions in the area of defense procurement fraud? I am just talking about defense procurement fraud here.

Answer: In response to your question concerning "savings" to be realized as a result of actions taken by the Defense Procurement Fraud Unit, I am providing the following information concerning recoveries:

- o In Fiscal Year 1987, recoveries of $725,500 in fines, civil an criminal penalties, and restitution ordered were made. During that fiscal year, 65 workyears and $5.221 million were expended by the entire Fraud Section. Of the contingent staff, only about 18 percent of these resources were directly involved in defense procurement fraud.

- o Thus far in the first half of Fiscal Year 1988, the following have been identified:

Fines, civil & criminal Penalties & restitution	$31,576,590
Cost Savings (attorneys fees and associated costs)	$10,818,406
Total	$42 394,996

Projected workyears of 65 and $5.725 million are anticipated being expended by the Fraud Section for this fiscal year. Of these resources, approximately, 23 percent are now directed to defense procurement fraud.

Question: On page 7 of your statement, you describe the four major areas of defense contractor abuse upon which the division concentrates--mischarging of cost, defective pricing, substitution of sub-standard or defective materials in products furnished to the defense establishment and, lastly, attempts to influence procurement decisions through bribery. Could you give us a breakdown on the number of cases successfully prosecuted or settled in each of these areas and the number of work hour requirements to get the cases through trial or settlement?

Answer: For Fiscal Year 1987, 28 new matters were accepted for further investigation and possible prosecution. Of the total, 4 involve product substitution; 6 involve cost mischarging; 6 involve defective pricing; 8 involve corruption; and 4 involve other matters.

For Fiscal Year 1988, 13 new matters have been accepted thus far. Of this total, 1 involves product substitution; 2 involve cost mischarging; 5 involve defective pricing; 3 involve corruption; and 2 involve other matters.

In addition, for Fiscal Years 1987 and 1988, the following information is provided with regard to cases (some initiated in previous fiscal years) concluded:

FISCAL YEAR 1987

Information/Indictments		7
Convictions		4
Cost Mischarging	1	
Product Substitution	1	
False Statements	1	
Bribery	1	
Acquittals		1
Recoveries		$ 725,500

FISCAL YEAR 1988

Information/Indictments		5
Convictions		5
Defective Pricing	2	
Kickbacks	3	
Recoveries (fines, civil and criminal penalties, restitution)		$31,576,590
Cost Savings (attorneys fees and associated costs)		$10,818,406

The Defense Procurement Unit does not track specific work hours for individual cases. All matters are periodically reviewed to determine that adequate resources are assigned to each matter.

Question: Then, secondly, I would like to have a breakdown of the number of investigations and work hours spent in each area that led to results other than successful prosecution or settlement.

Answer: In Fiscal Year 1987, only one case, involving cost mischarging, resulted in acquittal.

Question: Now, again, I am asking you to kind of tell me if in these four areas whether or not there is a division or a departmental priority among these defense fraud areas, the four that you mentioned.

Answer: As I stated earlier, there are four areas of emphasis. In order of current priority, the four areas are:

1. Defective products and testing.
2. Mischarging
3. Defective Pricing
4. Corruption

There is, of course, flexibility in this ranking, depending upon the significance of the particular case.

Question: Could you comment on any problems the Division is having or that you may foresee coordinating its anti-fraud efforts with the FBI and its mission within the Department's priority areas of law enforcement?

Answer: I would like to add the following to my response at the time of the Authorization hearing for the Division on May 24, 1988. In accordance with the original memorandum of understanding the FBI agreed to refer for screening all cases which met the original and revised guidelines. While the FBI has a liaison agent assigned to the Unit, the FBI Headquarters Office has not established a procedure under which DOD cases are screened by the Criminal Division's Defense Procurement Fraud Unit. On individual cases there are no coordination problems. There are differences of opinion as to the scope and duration of investigations. These differences are typical of many criminal investigative agencies.

Question: Would you give the Department's positions, thoughts, or comments on S. 1958, the Regional Fraud Act?

Answer: The Department of Justice opposes the Bill, in its present form, with respect to the creation of regional fraud units. DOJ requests additional slots for the Defense Procurement Fraud Unit and the United States Attorneys' Offices. We propose two alternatives for slots. DOJ can be given additional slots to be assigned as determined by DOJ; or, such slots can be specifically designated for procurement fraud, similar to the procedure used in the OCEDEF Program.

Questions from Senator Specter

Question: The Attorney General appeared before this Committee more than a year ago and the issue came up on the drug czar question.

Answer: As requested, the attached statement reflects the National Drug Policy Board/Administration position on this issue.

DRUG CZAR

The Administration's position regarding the (S.15) drug czar proposal was clearly stated in an April 2, 1987 letter from NDPB Chairman Meese to Senator Glenn; this correspondence is quoted at length:

> The principal difference between S.15 and the present structure is that S.15 proposes to create a super Cabinet level officer...with authority to direct the affairs of the various departments and agencies of the United States. While we recognize the superficial appeal of this proposal, we believe that it is ill-advised and that it is inconsistent with two centuries of Cabinet government which has served this nation well. While it is certainly true that there are a number of agencies and departments with drug control responsibilities, the same is true of many issues: social welfare, law enforcement, economic policy and so forth. Ultimately, it is the President who must, in our system, resolve disagreements which arise among the various departments and agencies in areas which cut across departmental lines...As the President's Commission on Organized Crime noted after studying the "drug czar" proposal:
>
>> It is neither possible nor desirable under our system of law to invest a Board Chairman or any other "Czar" with dictatorial power to command other Cabinet members to conduct the affairs of their respective Departments in a particular fashion.
>
> The additional layer of bureaucracy inherent in such a system would, we believe, retard rather than enhance drug control efforts. The bill calls for the creation of a new office which would be expensive to maintain and would require significant staff and other resources which would inevitably be drawn from current drug control programs. The creation of such a super-cabinet level office would diminish the responsibility of and thus the interest and commitment of Cabinet members and agency heads to solving the complex drug problem. There is no precedent for such a scheme in any comparable subject matter area.
>
> S.15, by giving the "drug czar" the authority to "direct and coordinate all United States Government [enforcement] efforts," jeopardizes the integrity of ongoing criminal investigations and prosecutions. It also threatens the autonomy of the Departments of Justice, Treasury, Transportation and State, a threat underscored by the overwhelming opposition to this proposal by the federal law enforcement community as well as such groups as the International Association of Chiefs of Police and the National Association of Attorneys General.

> In summary, we recognize the need for effective high-level coordination of all federal drug control programs and have sought to achieve this end within the traditional framework of government. We object vigorously, however, to the proposal in S.15 that the solution to our drug problems lies in the creation of a super-Cabinet level officer to serve as a "drug czar," presumably to work out of the Executive Office of the President. Such a system would, we believe, be highly counterproductive to effective federal anti-drug programs.

The National Drug Policy Board's record in the area of "effective high-level coordination" since the transmittal of this letter has supported the Administration's objections to a drug czar. In May 1987, the NDPB established nine "lead agencies" and charged each with "developing specific strategy and implementation plans" for their respective areas of responsibility. In June and July, standing "lead agency committees" were established within the NDPB's Drug Law Enforcement and Prevention and Health Coordinating Groups. Submitted on September 30, lead agency committee strategies were reviewed individually by the Cabinet-level Policy Board during eight meetings in October and November. In January, the strategies were approved and on March 9 and 15 provided to over 150 members of the House and Senate. On July 1, committees will submit the first of two biannual strategy implementation "progress reports" to the NDPB.

In short, the Board's record in coordinating an effective Federal offensive against drugs has been outstanding. In its February 1988 report on the NDPB, the General Accounting Office concluded:

> The Policy Board brings together...officials at several levels--cabinet members, agency heads, and program managers--enabling them to discuss, plan, and coordinate operations and programs.
>
> The Policy Board also provides a forum for...officials to discuss and resolve interagency disputes. We believe that the Policy Board's efforts to facilitate coordination have been worthwhile and responsive to the requirements of the law...

In conclusion, given the perils associated with establishment of a super-Cabinet level "drug czar," coupled with the success of the Board in carrying out its leadership and strategy development mission, the Administration will continue to oppose legislation such as S.15.

Numerous variations on the S.15 "drug czar" theme (including a section in S.2205) have surfaced. The Board, itself, has discussed minor adjustments of the existing system. These proposals will undoubtedly be topics of discussion for the pending Executive-Legislative Task Force.

Question: I would like to see an evaluation as to how well we are doing on the prosecution of drug cases. We know the celebrated cases; we know of the conviction last weekend. But I would like to see a comparison of the statistics for, say 1985, 1986, 1987, and 1988, or perhaps just a 1986, 1987 and 1988, as to how many drug prosecutions were initiated in each year, how many were prosecuted through to conviction and what the sentencing is, so we have some evaluation as to how well we are doing on the prosecution of major drug pushers and importers.

Answer: The attached chart reflects case statistics on the prosecution of drug cases for Fiscal Years 1983 through 1987. Information for Fiscal Year 1988 is currently unavailable.

EXECUTIVE OFFICE OF U.S. ATTORNEYS
CONTROLLED SUBSTANCE STATISTICS*
(by fiscal year)

	Filed:		Pleas:	Defendants Tried:			Other:
Year	Cases	Defs*	Defs* Pleas	Total Tried	Guilty After Trial	Acquitted After Trial	Other** Terminations
1983	4,753	9,732	4,583	1,852	1,656	196	2,413
1984	5,245	11,049	5,102	1,688	1,448	240	2,608
1985	6,137	12,161	5,604	1,635	1,395	240	2,123
1986	7,295	14,932	7,387	1,677	1,479	198	2,577
1987	7,445	14,655	9,769	2,411	2,122	289	1,509

* Includes OCDETF statistics. Figures for a given fiscal year do not necessarily refer to the same individuals.

** Includes dismissals, inter-district transfers, pretrial diversions, and court suspensions.

Question: (Reference is to Career Criminal Statute) I want to know the specifics. I want to know if it has been used for leveraging in State prosecutions, as it was intended. I want to know the details.

Answer: This information was transmitted earlier to Senator Specter. I am providing another copy at this time.

ALASKA

Negative report

MIDDLE ALABAMA

Negative report

NORTHERN ALABAMA

A) The District handled 12 prosecutions resulting in five convictions and one acquittal, with three cases pending.

B) In six other cases, dismissal of §924(c) charges contributed to the defendants pleas of guilty to other charges.

C) Larry Reno

Sentenced to 25 years for bank robbery based on his guilty plea induced in part because the United States Attorney's office agreed to dismiss §924(c) charges.

Glenn William Holladay - 18 U.S.C. §1201(a)(1)

On March 18, 1986, Mr. Holladay, who had been charged with receiving stolen property and was in jail, overpowered a jailer, taking his .38 caliber revolver. The sheriff was also disarmed and both the jailer and sheriff were placed in cells with Holladay leaving the jail with two firearms and inmate, Terrence Gregory Miller.

Holladay kidnapped a resident and forced him to drive Holladay and Miller to Georgia. In Georgia, the resident escaped and his vehicle was subsequently found abandoned.

Charged with kidnapping and a firearms count, Holladay received life for count one and five years for count two.

James P. Litman (aka) James P. Childress

Arrested on traffic violations, an inventory of this vehicle revealed one pound of cocaine, 11 pounds of marijuana, a .357 loaded magnum handgun and $5,000 cash. Charged with one count of violating 21 U.S.C. §841(a)(1) and one count of 21 U.S.C. §841(a)(1), Litman received 10 years on count one and five years on count two.

WESTERN ARKANSAS

Negative report

EASTERN CALIFORNIA

A) The District has used 18 U.S.C. §924(e) for eight defendants and has filed 20 indictments since 1984 and charged 26 defendants under 18 U.S.C. §924(c).

B) Three defendants were allowed to plead to lesser charges. One defendant was sentenced under 18 U.S.C. §924(e). Three defendants are still pending.

The District has not charged 18 U.S.C. §924(c) for the purpose of inducing guilty pleas. There are cases where it was charged and later dismissed based on extenuating circumstances.

C) William Flynn - 924(e)

Mr. Flynn was arrested with a gun in each hand while firing at his wife. He was charged with a single count of violating 18 U.S.C. §1202(a)(1) and was prosecuted as an armed career criminal. He pled guilty on the morning of the trial and received a 20 year sentence. At the time of his conviction, he had prior felony convictions for armed robbery, burglary, kidnapping, assault with a deadly weapon and escape. He had misdemeanor convictions for possession of a controlled substance, possession of a deadly weapon and obstructing a police officer. He also had a juvenile burglary commitment.

Ruben Ochoa - 924(e)

Arrested in his home in possession of a .38 caliber revolver, he had six prior felony convictions for burglary. Charged with violating 18 U.S.C. §922(g) and initially prosecuted as a career criminal, he was eventually allowed to plead guilty to possession of a firearm without the career criminal enhancement on condition that he stipulate to the maximum five year sentence.

George Ellis - 924(e)

Ellis was arrested for conspiracy to manufacture and distribute methamphetamine. A search of his house revealed a shotgun that had his fingerprint on the stock. Due to his extensive violent criminal record, he was charged with violating 18 U.S.C. §924(e) as well as the substantive drug charge. Further investigation revealed the gun was owned by a co-defendant who was staying in the bedroom where the gun was found. The §924(e) charge was dropped as part of a plea bargain under which the defendant was ultimately sentenced to 15 years in prison.

Jerald Eugene Cook - 924(e)

The defendant was charged with 18 U.S.C. §922(g) after firearms and ammunition were found during a parole search. The Government filed a "Notice to seek enhanced sentence under 18 U.S.C. §924(e)." The matter is pending.

William L. Potter - 924(e)

Charged with 18 U.S.C. §922(g)(1), the Government has filed a "Notice to seek enhanced sentence under 18 U.S.C. §924(e)." The matter is pending.

Anthony Bruce Figueroa - 924(e)

Charged with 18 U.S.C. App. §1202(a)(1) in March 1987, the defendant was a fugitive until June 1988. The Government filed a "Notice to seek enhanced sentence under 18 U.S.C. §924(e)." The matter is pending.

Donnie Roy O'Neal - 924(e)

Mr. O'Neal is charged with 18 U.S.C. §922(g)(1) and 18 U.S.C. §924(e). He has nine felony convictions which include burglary, assault with a deadly weapon and vehicular manslaughter. Since 1983, he has been arrested for burglary, rape, lascivious acts on a child and kidnapping. He faces a 15 year minimum if convicted; there is no maximum. Trial is set for July 1988.

Kirk Lee Anderson Jr. - 924(e)

Anderson was charged with 18 U.S.C. §922(g)(1), being a felon in possession of five long guns, and was prosecuted under the Armed Career Criminal Act, 18 U.S.C. §924(e). In the 1970's, he had convictions for three armed robberies, larceny of a gun shop and possession of destructive devices.

He pled guilty to the possession charge in exchange for the Government's agreement not to seek enhanced penalties under the Act. On February 8, 1988, Judge Edward Dean Price sentenced Anderson to straight probation, calling the offense a "technical violation", and announced that in all future possessory gun cases he would give no jail time unless the Government proved the gun was used in the commission of a crime.

Biondo - 924(c)

Mr. Biondo died before arraignment.

Carter and Davis - 924(c)

Both defendants were armed during a drug trafficking offense. Carter pled guilty to 21 U.S.C. §841(a)(1) and was sentenced to 12 years non-parolable. Davis pled guilty to 21 U.S.C. §841(a)(1) and was sentenced to five years non-parolable. The firearms count was dismissed.

Faircloth - 924(c)

Charged with 21 U.S.C. §841(a)(1), 18 U.S.C. §922(g) and 18 U.S.C. §924(c), Faircloth pled to count I and the firearms counts were dismissed. He received six years.

McDaniels - 924(c)

Charged with possession of cocaine with intent to distribute and armed at the time, McDaniels pled guilty to both counts and was given consecutive sentences as mandated by the statute.

Gonzales and Padilla - 924(c)

Hung jury - dismissed.

Whorton - 924(c)

Armed while possessing methamphetamine with intent to distribute, he pled guilty to the offenses and is awaiting sentencing.

Alvarado - 924(c)

Indicted for possession of a firearm while in possession of marijuana with intent to distribute it, he pled guilty to possession of phenyl-2-propanone with intent to manufacture methamphetamine because it would carry a greater sentence under the guidelines. He is a fugitive.

Jewett and Dahme - 924(c)

Jewett, charged with being armed during the manufacture of methamphetamine, pled guilty to both charges and is awaiting sentencing, Dahme pled guilty to methamphetamine and firearm offenses, but the Government did allow him to plead to being a habitual user of methamphetamine in possession. He is awaiting sentencing.

Morfin-Torres - 924(c)

Torres was convicted of possession of cocaine with intent to distribute and with being armed at the time. He is awaiting sentencing.

Cardenas - 924(c)

He had a firearm loaded and ready to fire when arrested after distributing heroin. The trial is pending.

Conley and D. Friend - 924(c)

They were indicted on possession of methamaphetamine with intent to distribute while armed at the time. Both are awaiting trial.

Means - 924(c)

Means was charged with manufacturing methamphetamine and 18 U.S.C. §924(c)(1), sentenced to eight years on the drug charges and the firearms charges were dismissed.

Moore - 924(c)

Moore robbed a bank in Stockton using a .25 caliber pistol. Charged with one count of armed robbery and one count of using the pistol in the commission of the robbery, he pled guilty to the armed bank robbery and the use of a firearm count was dropped. He received a 12 year sentence.

Gonzalez - 924(c)

He robbed two banks in 1985, one using a pistol and the other a UZI submachine gun. Charged with two counts of armed robbery and two counts of using a firearm in the commission of a felony, he pled guilty to one count of armed robbery and one count of using a firearm and received a 30 year sentence.

Dixon and Allen - 924(c)

Both defendants were charged with one count of conspiracy, eight counts of armed bank robbery and seven counts of using a firearm during the commission of a crime of violence. Both pled guilty to one count armed bank robbery, one count unarmed bank robery and one count of using a firearm during the commission of a crime of violence. Each received a 20-year sentence for bank robbery, five year consecutive sentences for carrying a firearm and five years consecutive probation.

Morgan - 924(c)

Charged with one count of armed savings and loan robbery, one count of armed robbery of a U.S. Post Office and two counts of using a firearm during the commission of a crime of violence, he pled to one count of armed bank robbery and was sentenced to twelve years.

Harden - 924(c)

He robbed two banks in four days and used a 20 gauge sawed-off shotgun during each robbery. Charged with two counts of armed bank robbery, two counts of using a firearm during the commission of a crime of violence, one count of being a felon in possession of a firearm and one count of possession of an unregistered firearm, he pled guilty to one bank robbery count and one count of using a firearm during the commission of a crime of violence. He received a 30 year sentence and the remaining counts were dismissed.

Gibson - 924(c)

Gibson robbed nine banks and used a pistol in one of them. Charged with nine counts of bank robbery and one count of using a firearm during the commission of a bank robbery, further investigation revealed he committed an additional seven robberies in another district. He pled to three bank robberies in Eastern California and one in another district and received a 30-year sentence plus five years consecutive probation.

Crews - 924(c)

Charged with 18 U.S.C. §2113(a)(d) and 18 U.S.C. §924(c), he pled guilty to armed robbery in state court and the federal charges were dismissed. He received seven years in state court. The federal government took the case to state court because the defendant has AIDS and the State Prison System was equipped to handle someone with AIDS.

Dupaty - 924(c)

Defendant was charged with two counts of 18 U.S.C. §2113(a) and two counts of 18 U.S.C. §924(c). He pled to one count each and was sentenced to 25 years.

Hurley - 924(c)

Originally indicted on a single count of 18 U.S.C. §2113(a) & (d), the Government subsequently found evidence that Hurley was responsible for four other armed robberies. Using the evidence as leverage, the Government entered into plea negotiations with defense counsel. The negotiations broke down when Hurley categorically denied committing any of the robberies. The Government then superseded the indictment with four additional counts of armed bank robbery and five counts of use of a firearm. Trial is scheduled for November 1988.

COLORADO

A) The District concluded 10 prosecutions charging 18 U.S.C. §924(c). Three convictions resulted in the mandatory five year term. The remaining cases had guilty pleas entered to more serious charges in exchange for dismissal of the five year firearms count. Four additional cases are pending.

B) Illustrative of the significant guilty pleas and sentences imposed are two bank robbery cases in which 18 U.S.C. §924(c) counts were dismissed in exchange for guilty pleas to the more serious charges. In one case concluded in 1987, the robber received a 25 year sentence for a single armed bank robbery. In another bank robbery case, where a bank employee was forced to accompany the robber, a sentence of 40 years was imposed.

There have been no cases in which the habitual criminal provisions of 18 U.S.C. §924(e) have been charged. One significant reason is the State of Colorado's habitual criminal statute which requires a flat 40 year sentence with no good time reduction for those convicted of a felony after suffering three prior felonies. Since the state prosecutors have vigorously enforced the provision, cases which could be prosecuted federally have been referred to the state for prosecution.

C) Not reported

CONNECTICUT

A) Since November 1984, the District has prosecuted approximatly 30 cases under 18 U.S.C. §924(c). Although some cases resulted in pleas bargains to lesser included offenses, a significant number resulted in convictions under the statute charged.

B) The provisions helped to obtain significant guilty pleas, especially in relation to members of gangs involved in drug related offenses.

C) Not reported

MIDDLE GEORGIA

A) The District had five individuals prosecuted under 18 U.S.C. §924(c).

B) See Section C

C) United States v. Forrest and Walls

Sheriff Ernest Wyatt Forrest of Crisp County, Georgia, and Donnie Gene Walls were indicted for conspiracy to aid and abet the importation of marijuana following a sting operation during which the Sheriff agreed to protect undercover GBI agents posing as drug smugglers. The agents dealt with the sheriff through Walls and during their negotiations with Walls, he carried a firearm. As a result, the indictment also contained a count charging a violation of 18 U.S.C. §924(c) naming both defendants under a Pinkerton theory arising from the possession of the firearm by Walls during the commission of the conspiracy offenses. The government agreed to drop the §924(c) count in exchange for pleas from both defendants to the conspiracy charges.

United States v. Duran

Jose Duran pled guilty in June to one count of 18 U.S.C. §924(c) and one count of violating 21 U.S.C. §841(a). He was stopped for driving with an expired tag and weaving. A consented search of his vehicle resulted in the discovery of approximately five kilos of cocaine in the trunk of the car and a loaded handgun with two extra clips under the driver's seat. State prosecution has been deferred pending the outcome of the federal case. The defendant was to be sentenced July 15th.

United States v. Kelly

Richard Lee Kelly, who had five prior burglary convictions, was charged with possession of a firearm by a convicted felon. Pursuant to a plea agreement mandating a five year sentence, Mr. Kelly pled guilty to lying on the ATF form.

United States v. Owens

Alvin Omega Owens was convicted numerous times for burglary and possession of a firearm by a convicted felon. Arrested at a local nightclub for drunkenness, a pat down revealed a gun inside his shirt. A jury trial was carried out with Mr. Owens claiming insanity. Mr. Owens was convicted and sentenced to 15 years. The case is on appeal.

NORTHERN GEORGIA

A) The District handled two cases in 1986 containing three defendants under 18 U.S.C. §924(c). One defendant pled, one was not guilty after a jury trial and the other was transferred.

In 1987 there were eight cases containing nine defendants. Five defendants pled, one was guilty as a result of a jury trial, one was dismissed and two are still pending.

In 1988 there have been eight cases containing nine defendants. One defendant has pled and the others are pending.

There were no cases under 18 U.S.C. §924(e) for 1986 or 1987. In 1988 there have been 3 cases involving three defendants. All these matters are pending.

B) Not reported

C) Not reported

NORTHERN GEORGIA - ATF only.

A) The District concluded three prosecutions by guilty pleas and three cases are still being litigated.

B) By indicting under the Act the District was able to negotiate pleas to convicted felon in possession of a firearm and obtain significant sentences in two of the cases. One case resulted in a plea to a simple possession count with the government free to recommend any sentence. The court sentenced the defendant to serve four years consecutive to the state sentence the defendant was currently serving which will push his parole date beyond the year 2000.

C)

John Irin Mattox

Mr. Mattox has five prior convictions for robbery, plus a prior conviction for burglary. On October 9, 1986, using a pistol that had been stolen about forty minutes earlier in another robbery, he committed an armed robbery on a service station. During the course of that robbery, he struck an attendant and threatened another customer. When the police arrived, Mr. Mattox attempted to shoot the police officers, however, the gun jammed. He was arrested after a brief chase and struggle. Indicted on August 25, 1987, for one count of possession of a firearm by an armed career criminal in case number CR87-327A, he entered a guilty plea on the indictment and was sentenced to fifteen years in custody concurrent with the state charges he is currently serving.

Michael Gunter Bush

Mr. Bush has three prior convictions for armed robbery including a federal bank robbery conviction. On September 30, 1985, he was arrested for the armed robbery of a fast food restaurant. The subsequent investigation revealed that Mr. Bush had been involved in eight other armed robberies of fast food restaurants and small stores in a two-month period. Mr. Bush pleaded guilty to a one count information charging him as a convicted felon in possession of a firearm in case number CR87-319A. On January 20, 1988, he was sentenced to serve four years consecutive to the state sentence he is currently serving.

Eddie Freeman

Mr. Freeman was convicted in 1958 for voluntary manslaughter, twice in 1963 for robbery and in March 1974 for voluntary manslaughter, this time shooting his wife. Despite his history, Mr. Freeman was back on the street and free to commit an aggravated assault on his new wife with her pistol on November 23, 1986. He entered a guilty plea to a one count information for convicted felon in possession of a firearm in case number CR87-320A on February 16, 1988, and received a sentence of four years to serve in custody.

Eugene Powell Griffin

Mr. Griffin has three prior convictions for burglary and one murder conviction. On May 19, 1987, he was stopped for a routine traffic violation and a gun and a substantial quantity of cocaine was discovered. Mr. Griffin was indicted on January 21, 1988, in case number CR88-45A for one count of possession of a firearm by an armed career criminal. The case is still pending.

Alvin Gregory Scott

Mr. Scott has three prior robbery convictions plus a burglary conviction. On July 23, 1987, he was discovered asleep in a stolen car and subsequent pat down revealed a firearm which was later discovered to have been stolen from a Columbus, Georgia police officer. Mr. Scott was indicted for one count of possession of a firearm by an armed career criminal on January 21, 1988, in case number CR88-46A. The case is still pending.

Sylvester Millines

Mr. Millines has two previous burglary convictions as well as a felony theft by taking conviction. On March 7, 1987, he was arrested following a burglary in which he took three guns which he used to terrorize the elderly residents of the home. Indicted for one count of possession of a firearm as an armed career criminal in case number CR88-173A on April 12, 1988, the case is still pending.

SOUTHERN GEORGIA

A) The District handled two cases.

B) Not reported

C) United States v. Miller

Walter Allen Miller has twelve prior felony convictions but never received more than a five year sentence and has never served any appreciable length of time. Mr. Miller was sentenced to 20 years custody with no parole.

United States v. Green

James Alfonso Green has accumulated sixteen felony convictions and received only one sentence over three years despite his record. Mr. Green was sentenced to 15 years custody with no parole.

HAWAII

A) The District had one arrest which resulted in a conviction. The defendant is awaiting sentencing.

They handled seven matters involving violations of 18 U.S.C. §924(c).

B) The Act may be extremely useful in inducing "significant guilty pleas" if persons charged with violating the Act are allowed to plead guilty to other offenses and thereby avoid the mandatory minimum 15-year sentence. The Act is not utilized to obtain guilty pleas in the absence of extenuating circumstances.

C) The defendant was caught buying ammunition for a firearm after approximately sixteen burglary convictions in State Court.

924(c)	924(c)(1)
U.S. v. Muller	U.S. v. Hill
U.S. v. Eldridge	U.S. v. Amundson
U.S. v. Fontanilla	U.S. v. Soares
U.S. v. France	

IDAHO

A) The District has one pending prosecution.

B) Not reported

C) The defendant is a fugitive and a warrant is outstanding.

CENTRAL ILLINOIS

A) The District handled the following matters:

1984 - §924(c) - 1
1985 - 0
1986 - §924(e) - 2
1987 - §924(e) - 5
1988 - - 0

B) Not reported

C) Not reported

SOUTHERN ILLINOIS

Negative report

NORTHERN INDIANA

Negative report

NORTHERN IOWA

A) The District had one case.

B) Not reported

C) Raymond Nelson King of LaSalle, Illinois entered a guilty plea and was sentenced to 15 years on June 25, 1987. Mr. King was suspected of 300 burglaries in the Central Illinois/Iowa area. He has a criminal history of numerous burglary, weapons and theft charges.

SOUTHERN IOWA

Negative report

EASTERN KENTUCKY

A) There were 48 arrests resulting in 26 prosecutions and 37 convictions with matters pending against nine individuals.

B) See Section C

C) United States v. Mills

Indicted for violating 21 U.S.C. §841(a)(1) and 18 U.S.C. §924(c), David Lee Mills was arrested in a tent in a marijuana field in August 1987. Three weapons were present in the tent but could not be directly linked to Mr. Mills by a fingerprint trace. A jury convicted him on the drug charges but acquitted him on the gun charges. He has not been sentenced.

United States v. Hatfield

Indicted for violations of 21 U.S.C. §841(a)(1) and 18 U.S.C. §924(c), Ernie Wayne Hatfield was arrested near a shelter close to a marijuana field in September 1987. Two weapons were found in the shelter but could not be directly linked to defendant who testified he was hiking in the woods and came upon the marijuana shortly before the State Police arrived. He was acquitted on all charges.

United States v. Heightland

Five defendants were arrested on 18 U.S.C. §924(c)(1). All were charged with the use and carrying of firearms during the shooting into two coal trucks resulting in the death of one individual and injury to another. Four were convicted and sentenced to terms of 40, 35, 30 and 30 years.

United States v. Carey

Two defendants arrested on 18 U.S.C. §924(c)(1) who had two prior convictions for armed bank robbery and are suspects in numerous other armed bank robberies.

United States v. Sexton

Five defendants arrested. All pled guilty to drug offenses.

United States v. Little

Two defendants charged and convicted of armed bank robbery and 924(c)(1).

United States v. Trent

Two defendants charged and convicted of distribution of 37 pounds of marijuana and carrying handguns during the course of drug trafficking offense.

United States v. Rowe

Two defendants indicted for armed bank robbery. One pled to armed bank robbery and the other to aiding and abetting.

United States v. Varney

Two defendants charged with possession/distribution of cocaine and one pled guilty to drug charges.

United States v. Money

Darrell Lee Money was charged and pled guilty to bank robbery.

United States v. Mitchell

Three defendants arrested and trial is pending.

United States v. McDaniel

Two defendants indicted for 18 U.S.C. §371, 18 U.S.C. §2113(a) & (d), 18 U.S.C. §924(c)(1), and 18 App. U.S.C. §1202(a)(1). Trial is pending.

United States v. Lawson

Carl "Tater" Lawson, Jr. was indicted for various offenses of illegal possession and manufacture of weapons, carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c). Acquitted on 924(c) but received ten years in prison for the other counts.

United States v. Durram

Of the four defendants, one was a convicted felon and another was a fugitive on a California murder charge.

United States v. Alvarez

Several firearms were possessed by two defendants as they sold cocaine from two rented apartments. They also traded cocaine for guns. Defendants were arrested with four pounds of cocaine.

United States v. Lockhart

Carl Lockhart was charged with violating 18 U.S.C. §922 and 18 U.S.C. §924(c). He was convicted in January 1988 and had four prior robbery convictions.

United States v. Armstrong

Richard Armstrong was charged with violating 18 U.S.C. App. §1202(a). A search of his residences resulted in finding five firearms. Sizeable quantities of marijuana, LSD, diazepam and cocaine. Mr. Armstrong had a lengthy prior criminal record.

United States v. Smith and Warren

Indicted in December 1986, Jackie Lynn Warren pled guilty and Harry Louis Smith was convicted in March 1987 to 18 U.S.C. §2118(a)(c) & (1) and 18 U.S.C. §924(c)(2).

United States v. Smith

In November 1987, Clifford Smith pled guilty to 18 U.S.C. §2113(a). He had a prior felony record including a conviction for aggravated robbery.

United States v. Rachael

Thomas P. Rachael was convicted in December 1982 of 18 U.S.C. §§2113(a)(d) and 924(c). He had a prior felony record including a conviction for armed robbery.

United States v. Hampton

Roger Hampton was convicted in January 1988 of 18 U.S.C. §§2113(a) & (d) and 924(c).

United States v. Farrow

Pending.

United States v. Campbell

Pending.

United States v. Fair

A general drug case involving a buy/bust, the defendants were convicted on all counts.

United States v. Moore and Morse

Two career criminals, George E. Moore and Charles Morse were indicted for violations of 18 U.S.C. §2114 and 18 U.S.C. §924(c). Trial was set for July 1988.

EASTERN LOUISIANA

A) The District handled matters involving nine individuals.

B) In the District, the Act, especially §§924(c)(1) and (e), become effective tools in the effort to increase sentencing on habitual offenders and in obtaining guilty pleas.

C)

Fleming

Charged with conspiracy to commit bank robbery, bank robbery and utilizing a weapon during and in relation to a crime of violence, fleming entered a plea of guilty to the indictment.

Tate

Involved in a cocaine conspiracy and distribution offense, he pled guilty to the charges in the indictment and cooperated with DEA in return for dismissal of the 18 U.S.C. §924(c) violation.

Gonzales and Fernandez

Involved in a controlled dangerous substance offense, both possessed weapons during a distribution of narcotics to undercover agents. Fernandez pled guilty to the drug violations as part of a plea agreement which dismissed the 18 U.S.C. §924(c) charge in return for his cooperation against Gonzales and others. Gonzales refused to cooperate and pled guilty to the entire indictment and received a lengthy prison sentence.

Yearwood

A drug distribution offense, he pled guilty as part of plea agreement requiring his cooperation in exchange for the dismissal of the firearms charge.

Cavalier, Abadie, Monrique, and Ayala

All involved drug distribution offenses and each, except Monrique, pled guilty to multiple drug distribution offenses and conspiracies in exchange for dismissal of the weapons violations. Monrique pled guilty to the entire indictment and received a lengthy prison sentence.

MIDDLE LOUISIANA

Negative report

WESTERN LOUISIANA

A) Total cases: 23 924(c)-20
924(e)- 3

Pending: 11 924(c)-10
924(e)- 1

Declinations: 6

Convictions: 2 924(c)- 2

Pleas: 4 924(c)- 1
Other Counts - 3

B) Not reported

C) Not reported

SOUTHERN MISSISSIPPI

Negative report

WESTERN MISSOURI

A) See Section C.

B) 18 U.S.C. §924(c) induces pleas to other offenses and insures substantial sentences in appropriate cases.

18 U.S.C. §924(e) guarantees lengthy sentences for dangerous criminals.

C) United States v. Tommy Beaver

Found guilty of all counts by a jury and found to be a career criminal offender pursuant to 18 U.S.C. §924(e), he received a 23-year sentence.

United States v. Noel Brett, James Monroe, Carl Williams

Indicted for violations of 18 U.S.C. §924(c) and drug charges, Brett and Monroe were convicted by jury trial on all counts, including 924(c). Williams took the plea offer to avoid the 924(c) count and thereby avoided the five-year mandatory sentence.

United States v. Marcus Burns

Indicted for violation of 18 U.S.C. §924(c) and drug charges, he pled guilty to drug trafficking to avoid a 924(c) conviction.

United States v. Anthony Call, Joe Thomas

Indicted for violating 18 U.S.C. §924(c) and drug charges, Thomas pled guilty to ten-year minimum drug charges to avoid a 924(c) conviction and Call was convicted on all charges by jury trial.

United States v. Stanley Willis, Carmen Fuel and Sean Ray
United States v. Howard Chase and Howard K. Chase
United States v. Herman Clark

Indicted for violation of 18 U.S.C. §924(c) and drug charges, the cases are pending.

United States v. Jeffrey Collins
United States v. Anthony Giarraputo and Deborah D. Smith
United States v. Steven R. Cox and David King
United States v. Cecil Crawford and Rudolph Hamilton
United States v. Dudley Haye and Daniel Moore
United States v. Fred Horton
United States v. Donald Lee Price
United States v. Michael Alexander Richards
United States v. John Mistretta and Nancy Ruxlow
United States v. Randal Roach and Jeff Riley
United States v. Bruce Wellington and Warren Thomas

Indicted for violations of 18 U.S.C. §924(c) and drug charges. Pled guilty to avoid 924(c) convictions.

United States v. Earl D. Drew and Henry Tatum

Indicted for violating 18 U.S.C. §924(c) and drug trafficking, Drew's sentencing is pending and Tatum is a fugitive.

United States v. Oswald Francis and Barrington Riley

Pled guilty to both 18 U.S.C. §924(c) and drug charges.

United States v. Henry Ivy

Convicted for violating 18 U.S.C. §924(c) and drug charges.

United States v. Ernest Jones, Derrick McCarter, John Swisher and Darius White

Indicted for violating 18 U.S.C. §924(c) and drug charges, Jones is a fugitive, McCarter and Swisher were tried by a jury and convicted of all counts and White pled guilty to one drug count and 18 U.S.C. §924(c).

United States v. Wayne Matra

Indicted for violating 18 U.S.C. §924(c), another firearms charge and drug charges, he was convicted on all counts and received 20 years for drug trafficking, five years for the 924(c) conviction and five years for having an unregistered machinegun.

United States v. Morris Mitchell

18 U.S.C. §924(e) used to induce a guilty plea.

United States v. Mark Moore

Pled guilty to kidnapping and violation of 18 U.S.C. §924(c).

United States v. Donald Newell, Lawrence Broderick, Craig Roberson and Bobby Hon

All pled guilty to drug trafficking and 18 U.S.C. §924(c) charges.

United States v. Kevin Paige, Herman Paige, W.C. Cartwright, Roderick Stephenson, Alinzo Paige, Bryan Cartwright. Ricky Lee and Tracy Reynolds

Indicted for violating 18 U.S.C. §924(c) and drug charges, Reynolds pled guilty to drug trafficking to avoid the 924(c) conviction, Lee pled guilty to 924(c) and drug trafficking, Bryan Cartwright was acquitted and all others were convicted by jury trial of 924(c) violations and drug trafficking.

United States v. Robert Studnicka
United States v. Lee Reed and Nancy Reed
United States v. Royston Patterson

Charged with violating 18 U.S.C. §924(c) and drug charges, the case is pending.

United States v. Terry Savage

Indicted for being a felon in possession of a firearm and a career criminal offender pursuant to 18 U.S.C. §924(c). His appeal is pending.

United States v. Michael Scarlett, Collin Lewis, Richard Oldham, John Foster, Aston Reynolds, Claudia Thomas and Jacqueline Nelson

Indicted for violating 18 U.S.C. §924(c) and drug charges, Nelson pled to 924(c) only, Thomas to drug trafficking to avoid a 924(c) conviction and all others to 924(c) and drug trafficking

United States v. Clarence Warren

Charged with kidnapping and violating 18 U.S.C. §924(c), the case is pending.

United States v. Charles Williams

Indicted for violating 18 U.S.C. §924(c) and drug charges, Judge dismissed 924(c) charge on grounds that if defendant did not possess or brandish firearm then did not use. Convicted by jury on drug charges.

United States v. Leon Willis, Lloyd Johnson and Roy Hutton

Indicted for violation of 18 U.S.C. §924(c) and drug charges, Judge dismissed 924(c) count for reasons stated in U.S. v. Williams above. Jury convicted on all other charges.

United States v. Carl Rosendahl

Charged with civil rights and 18 U.S.C. §924(c) violations, §924(e) was used to induce a guilty plea.

United States v. James Lester Valiant

Indicted for 21 U.S.C. §841(a)(1), 18 U.S.C. §924(c), 18 U.S.C. §§922 and 924(e). He was convicted on all three counts by jury trial and sentencing is pending.

United States v. Errol Wilson, Michael Campbell, Cara Beasley and Lennox Benain

Indicted for violating 18 U.S.C. §924(c) and drug charges, Wilson is a fugitive, Beasley was recently apprehended (the case is pending) and Campbell pled guilty to drug trafficking to avoid 924(c) conviction.

NEBRASKA

A) The District handled four cases.

B) Not reported

C)

Catarino Gonzales

Awaiting trial, Mr. Gonzales is charged with possession of 23 handguns in the backseat of an automobile. Mr. Gonzales has three prior burglary convictions.

Charles Saxton

Mr. Saxton was charged with possession of three rifles in a residence and had three prior armed robberies. ACC not filed but he pled guilty which resulted in a maximum five year sentence.

Denver Reed

Mr. Reed was charged with possession of a .38 caliber pistol and has three prior armed robbery convictions. He received a 15 year sentence.

Mark Cloud

Mr. Cloyd was charged with armed bank robbery, using a firearm in the robbery and a felon in possession. He had one prior robbery and two prior burglary convictions. He received 25 years on the bank robbery, five years consecutive on using a firearm and 25 years consecutive on the possession.

NEW HAMPSHIRE

Negative report

NEW MEXICO

A) The District has handled two cases involving the Armed Career Criminal Act. An additional four cases are under investigation.

B) Not reported

C) Carlos Maestas was prosecuted under 18 U.S.C. 924(e)(1) and was sentenced under the enhancement provisions.

The case involving Roger Benavidez is pending trial.

EASTERN NEW YORK

A) The District has had one prosecution under the Act and it is pending in the Second Circuit.

B) As a sentence enhancement statute, defendants may collaterally attack the prior convictions used to enhance the sentence.

In United States of America v. Raphael Dwight Hundley, the defendant attacked a 10 year old conviction previously affirmed in another circuit. The increased penalties under the Act did not warrant the three briefs filed in District Court and one brief filed in the Court of Appeals defending the prior conviction.

WESTERN NEW YORK

A) The District has handled six cases involving 18 U.S.C. §924(c) and 3 cases involving §924(e). Seven of those matters are still pending.

B) Not reported

C) In early 1988, two defendants (James Carey and Jose Torres) pled guilty to other substantial charges, each being sentenced to two consecutive terms of 20 years and 10 years respectively.

EASTERN NORTH CAROLINA

A) The District has handled five matters involving the Act.

B) The Act is very useful in getting lengthy prison sentences for dangerous felons who need to be incapacitated for the protection of the public. Although not used as such, it could be a compelling plea bargaining tool.

§924(c) is one of the most powerful and useful prosecutive tools because:

1) it forces judges to give a significant active sentence in the case of violent or drug felons who use firearms;

2) it gives rise to a rebuttable presumption of pretrial detention pursuant to 18 U.S.C. §3142(e); and

3) it can be useful in plea bargaining.

C) United States v. Smith - 1987

Convicted at trial and sentenced to 15 years.

United States v. Dawson - 1987

Dawson was convicted of the armed career criminal provision and 18 U.S.C. §922(h)(1). The court elected to sentence on the §922(h)(1) count and not impose a sentence on the armed career criminal count, relying on the authority of United States v. Ball.

United States v. Ray - 1988

The defendant pled guilty to the armed career criminal count and stipulated to the prior convictions. He is detained awaiting sentencing.

United States v. Fennell - 1988

The defendant is charged with the armed career criminal provision and is awaiting trial.

United States v. Talbot - 1988

Convicted of 13 counts in July 1988, the defendant has been notified that the Government will seek the armed career criminal enhancement. He is detained awaiting sentencing.

NORTH DAKOTA

A) Since 1984, the District has handled four prosecutions and convictions of ATF cases.

B) Not reported.

C) Jerome Jackson and Jamie Van Quick

The defendants, on April 24, 1985, committed an armed bank robbery where both were armed with handguns and Jackson hit the manager and a teller to the extent that both required medical attention. Upon apprehension, both were found in possession of sawed-off shotguns. Jackson had an extensive criminal record and received 25 years, Quick six years.

Thomas Harrelson, Cynthia Ehrlich and Stuart Skarda

On February 19, 1987, the defendants committed armed bank robbery. During the incident, Ehrlich pointed a firearm directly at the bank president and told him to stop chasing them. They then went to Minnesota where they commandeered a vehicle with a man, woman and two children. All suspects were apprehended at a roadblock. Harrelson has an armed robbery and bank robbery record and Skarda has a prior arrest record. Ehrlich received six years, Skarda 11 years and Harrelson 17 years.

Gerald Johnson

On January 11, 1988, Johnson sold two ounces of cocaine to an undercover agent. When arrested he was found to be carrying a loaded handgun and he had a drug arrest record since 1976. He received 51 months on the drug charges and five years on the gun charges.

Merlin Neumiller

On November 29, 1987, Mr. Neumiller negotiated with an undercover agent for the sale of cocaine and marijuana. When arrested he was found in possession of a loaded .357 magnum handgun. Subsequent interviews revealed extensive dealings in interstate marijuana and cocaine trafficking. He received three years jail and three years probation.

NORTHERN OHIO

Letter dated July 5, 1988, sent directly to Senator Specter (copy enclosed).

U.S. Department of Justice

United States Attorney
Northern District of Ohio

Suite 300
1404 East Ninth Street
Cleveland, Ohio 44114-1704

1988 JUL -8 PM 4:27
OFFICE OF [illegible]

July 5, 1988

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

ATTN: Ms. Margaret Morton
Judiciary Staff

Dear Senator Specter:

We are pleased to respond to your letter of May 13, 1988 concerning the Armed Career Criminal Act and its effectiveness in law enforcement efforts to curb recidivism of the violent and habitual offender.

I have established, through my Law Enforcement Coordinating Committee (LECC) with the specific help of the Special Agent in Charge of our office of the Bureau of Alcohol, Tobacco and Firearms (ATF), a "Violent Recidivist Offenders" program in this district. This program is creating a network of communication between local, state and federal law enforcement officers and prosecutors so that potential violators may be prosecuted in the jurisdiction which creates the most favorable climate for well deserved prison sentences. My next LECC training seminar, to be held on July 27, 1988, will include a panel on Violent Recidivist Offenders and will concentrate on our program. We expect approximately 250 local, state, and federal officers and prosecutors at this annual seminar.

This office has prosecuted two (2) individuals pursuant to 18 U.S.C. §924(e).

The first individual was Wayne Sievert, a 53 year old male with three (3) prior bank robbery convictions. Sievert was indicted in May 1987 under the Armed Career Criminal Act after the armed robbery of a fourth bank. He pled guilty to both the armed robbery and the violation under 18 U.S.C. §924(e). Sievert was sentenced to 17 years on the bank robbery and a mandatory 15-year penalty under the Armed Career Criminal Act to run concurrently with the bank robbery sentence.

We have recently indicted another individual who is still a fugitive. This individual was found in the possession of a loaded firearm during execution of a search warrant by local police officers. He had previously been indicted and convicted of distributing heroin on four (4) separate occasions. We intend to vigorously pursue this prosecution. We indict every case in which we determine that application of the Armed Career Criminal penalty is warranted. Our policy has been and will continue to be that we will not plea bargain away violations of this provision once the case has been indicted.

I hope this information will be of benefit to you. Please do not hesitate to contact me or Assistant U. S. Attorney Gary D. Arbeznik at (216) 363-3922 for further information.

Sincerely yours,

Patrick M. McLaughlin
United States Attorney

cc: Manuel Rodriguez
EOUSA

SOUTHERN OHIO

A) The District has had 15 convictions under 18 U.S.C. §924(c) and 0 under 18 U.S.C. §924(e).

B) Not reported since information is not kept in a readily accessible manner.

C) Not reported

EASTERN OKLAHOMA

A) This District has had one arrest and prosecution.

B) No records have been kept but the Act has been useful in persuading recalcitrant state offenders to enter guilty pleas at that level.

C) Robert Silkwood, previously convicted of approximately 12 felonies, including at least four violent felonies defined by the Act, was in possession of a firearm during a traffic stop. He previously confessed to his involvement in over three dozen burglaries, had served several prison terms and had been involved in drug trafficking. He was convicted by jury trial in June 1988 and is currently awaiting sentencing.

OREGON

Letter dated June 21, 1988, sent directly to Senator Specter (copy enclosed).

U.S. Department of Justice

United States Attorney
District of Oregon

FNW:dbr

312 United States Courthouse
620 S.W. Main
Portland, Oregon 97205

503 [illegible]

June 21, 1988

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Re: Armed Career Criminal Act

Dear Senator Specter:

Thank you for your letter of May 13, 1988, regarding the Armed Career Criminal Act.

Since the inception of the statute, this office has prosecuted a significant number of Armed Career Criminal cases. In fact, the latest statistics provided to us by the Bureau of Alcohol, Tobacco and Firearms indicate that this district is prosecuting the largest number of cases of any judicial district in the country. Our statistics from 1984 to the present are as follows:

1.	Armed Career Criminal cases referred or considered for prosecution:	38 cases.
2.	Number of cases prosecuted under the Act:	33 cases.
3.	Number of cases pending indictment or trial:	12 cases.
4.	Number of convictions obtained under the Act:	15 cases.
5.	Number of convictions where prosecution under the Act was used to obtain a plea to another charge:	4 cases.
6.	Number of acquittals:	2 cases.

Honorable Arlen Specter
Page 2
June 21, 1988

You have asked for specific examples illustrating the Act's usefulness in inducing significant guilty pleas. It has been our practice to rarely use the threat of the statute as a bargaining chip. Our philosophy has been to bring a charge under the Act and to take a plea to the fifteen (15) year mandatory minimum sentence or proceed to trial.

You have also requested we provide factual summaries of our Armed Career Criminal cases. I have attached a Portland Police Bureau newspaper article and Ninth Circuit Court of Appeals decision regarding the case of United States v. Clawson which I think you will find illustrative of the general types of Armed Career Criminal cases we are prosecuting.

Thank you for your interest in the cases we are prosecuting under this very valuable statute. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

CHARLES H. TURNER
United States Attorney

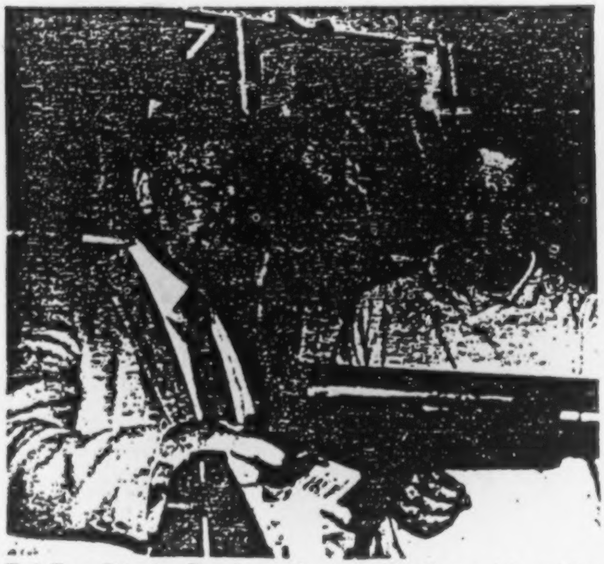
Encls.

cc: Jerry W. Tate
Resident Agent in Charge
Bureau of Alcohol, Tobacco and Firearms
350 Crown Plaza Building
1500 S.W. First Avenue
Portland, OR 97201

Fredric N. Weinhouse
Assistant U.S. Attorney

ATF's Multiagency Task Force

Keeping career criminals off the street



Task Force Detectives Tom Jacobs, Portland Police Bureau, left, and Jim Ayers, Oregon State Police, examine a sawed-off shotgun that will be used as evidence in an armed career criminal prosecution.

On November 10, 1985, at approximately 1:10 a.m., Portland Police Bureau detectives were conducting a forgery suspect surveillance of the Chumaree Motel parking lot. Information received earlier had led them to believe that two check forgery suspects, later identified as Arthur Minkoff Clawson and a female companion, were staying in Room 31. Clawson was a known felon with a violent past, having prior convictions for robbery, burglary and assault.

At approximately 1:15 a.m., the detectives observed the suspects inside a vehicle in the motel parking lot. The officers pulled their unmarked police car to the side and slightly behind the suspects' vehicle. They then exited their car.

As one detective approached the passenger side of the suspects' car, Clawson opened the passenger door and stepped out. The detective stated: "Police officers, we would like to talk to you." Clawson immediately took two running steps toward the rear of the vehicle and, at the same time, reached his right hand under his jacket toward the small of his back.

The detective ordered him to freeze and lay face down on the road. The officers then handcuffed Clawson and, while waiting for his partner to bring the female companion to his location, observed Clawson roll onto his side and remove a handgun from the back of his waistband.

The detective grabbed Clawson by his jacket and pushed him back on the ground, forcing the loaded pistol out of his grasp. Clawson was placed under arrest and transferred to the Multnomah County Detention Center.

Prior to this arrest, Clawson had been in and out of the Oregon State Prison and county jails numerous times. However, things were about to change.

On November 11, 1985, ATF/Portland was informed about Clawson's arrest the prior day. A criminal history check revealed Clawson's prior convictions for armed robbery and burglary. It appeared that Clawson could only be charged with a Class C felony in state court. However, it was determined that his predicate convictions made him eligible for a new federal firearms statute called the Armed Career Criminal Act.

The Portland U.S. Attorney's Office was contacted, and it was concurred that Clawson was a serious threat to the community and should be prosecuted to the full extent of the new law.

On January 23, 1986, a federal grand jury indicted Clawson for possession of a firearm after former conviction, as amended by the Armed Career Criminal provision of the 1984 Comprehensive Crime Control Act.

On May 16, 1986, after numerous motions had been exhausted, Clawson was found guilty by a jury trial in Portland. On June 30, 1986, Clawson was sentenced to 25 years incarceration in the federal penitentiary without possibility of parole.

This conviction was extremely significant because it marked the first conviction of its kind in the state of Oregon and one of the first in the United States. It also proved to be significant because it set the stage for the formation of the now-existing Armed Career Criminal Task Force for the Portland Metropolitan area.

The task force came about due to legislation that was enacted in 1984 by the 98th United States Congress. This legislation was co-sponsored by U.S. Congressman Ron Wyden of Oregon and is referred to as the Comprehensive Crime Control Act.

This piece of legislation contained the most significant series of changes in the federal criminal justice system ever implemented at one time. Chapter XVIII of the Comprehensive Crime Control Act enacted the Armed Career Criminal Act.

This act created no new violations, but did enhance the penalty provision for the violation of "felon in possession of a firearm." If a defendant convicted of this offense has three prior convictions (state or federal) for robbery, burglary or both, the amendment statute provides for mandatory imprisonment of not less than fifteen years.

It should be noted that the defendant does not have to be committing a crime with the firearm; mere possession is sufficient for the charge. In addition, the court cannot suspend or grant a probationary sentence to a defendant convicted under this act, and the person is not eligible for parole.

On October 27, 1986, President Reagan signed the 1986 Career Criminal Amendment Act into law. This law significantly expands the predicate offenses for armed career criminal penalties. It took effect on November 15, 1986, and should have significant impact on law enforcement efforts.

This amendment states that the predicate offenses will now include "a violent felony or a serious drug offense." The term "serious drug offense" means:

- An offense under the Controlled Substance Act, the Controlled Substance Import and Export Act, or the first or third section of the Public Law 96-350, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- An offense under state law, involving manufacturing, distributing or possessing with intent to manufacture or distribute a controlled substance (as defined in Section 102 of the Controlled Substance Act), for which a maximum term of imprisonment of ten years or more is prescribed by law.

The term "violent felony" means any crime punishable by imprisonment for a term exceeding one year that:

- Has an element of the use, attempted use or threatened use of physical force against another person; or
- Is burglary, arson or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

The impact this law change will have on armed career criminal cases appears to be extremely significant. ATF and task force members are working closely with the U.S. attorney's office in properly administrating this expansion of the law.

On July 1, 1986, a multiagency task force, approved by the Bureau of Alcohol, Tobacco and Firearms, became operational in the Portland metropolitan area. It is one of 19 operational task forces throughout the United States.

The task force is located in the Portland ATF office, and is comprised of an ATF agent and detectives from the Portland Police Bureau and the Oregon State Police. All other law enforcement agencies in the metro area, including the Oregon Corrections Division, supply the task force with the names of suspects who may qualify for the enhanced sentencing under the Armed Career Criminal Statute. The task force's success depends largely on the cooperation that exists with the state and local agencies.

The task force has two primary objectives. First, it seeks and identifies active career criminals who are violating the "possession after former" statute, and attempts to gain evidence for successful federal prosecution. Second, it investigates referrals from all law enforcement agencies in the Portland metropolitan area regarding criminals who appear to have violated the federal "possession after former" statute and are subject to sentencing under the enhanced penalty provisions set forth by the Armed Career Criminal Statute.

The statute provides for mandatory imprisonment. These mandatory sentences allow for no probation, parole or early release, and they are non-negotiable and must be imposed consecutively rather than concurrently to any other related term.

The benefit that this statute provides for law enforcement when applied to the career criminal, and particularly the violence-prone criminal, are obvious. The mandatory sentencing can either remove the criminal from the community for extensive periods of time or provide strong inducement for cooperation with potential application of the statute.

Further, in situations where predicate local offenses associated with firearms possession (such as armed robbery) develops prosecutorial problems due to witness reluctance or similar problems, the referral of that particular case for federal prosecution may salvage the case on what normally might be considered a lesser violation.

This law would obviously be of no value if it were not supported by all segments of the judicial process. The Portland Armed Career Criminal Task Force has received a tremendous amount of support from all area law enforcement agencies, the district attorney's offices, and the U.S. attorney's office, which is committed to the prosecution of such cases. The federal judges have supported the mandatory sentencing provisions of the statute to the chagrin of defendants.

Since its inception, the task force has reviewed and opened 30 cases. Eight suspects have been prosecuted where the enhanced sentencing has been applied, and the sentences have ranged from the 15-year minimum up to 30 years. Five suspects have been adjudicated on other crimes in federal court where the Armed Career Criminal enhanced sentencing was not pursued. Three individuals are now awaiting trial and five others are awaiting indictment. Numerous other cases are now being reviewed on which investigations have not yet been opened.

The Portland Armed Career Criminal Task Force was established and is part of a national effort by the Bureau of Alcohol, Tobacco and Firearms to meet its expanded responsibilities under the Comprehensive Crime Control Act of 1984. The national project established by the Bureau of Alcohol, Tobacco and Firearms has been dubbed "Project Achilles."

The task force concept is designed to coordinate federal law enforcement efforts with state and local departments to combat a national or international crime problem. The task force approach to investigation and prosecution enables the strengths of participating agencies to be joined together while avoiding the creation of a new bureaucracy, resulting in greater achievement than could be accomplished by one agency alone.

Since mid-1986, enhanced sentences have been obtained on 51 armed career criminals nationwide. Eight of those cases where the suspects received the mandatory sentencing have come from the Portland metropolitan area. This accounts for 16 percent of the total.

What does this mean to the law enforcement community in Oregon? Studies conducted at the Rand Corporation of Santa Monica, California, by Professor Marvin Wolfgang of the University of Pennsylvania, and surveys within the California prison system have revealed similar and striking profiles of the career criminal.

Based on admissions immediately preceding their arrests, the studies indicate past patterns of conduct. They show that 100 offenders may have committed 490 armed robberies, 720 burglaries and approximately 4,000 other serious crimes.

Another example, again based on admissions but substantiated by FBI records, reveal that 200 career criminals would commit 179,000 criminal offenses in a five-year period. One other study looked at 243 narcotics addicts. This study found that, on the average, each narcotic addict committed at least one crime on 240 days out of 365 days.

If we take these same statistics and apply them to the criminals who are being taken off the streets of the Portland metropolitan area, we can see a significant impact on crime. The task force's work will make the communities in which these criminals have resided and conducted their criminal activity much safer places to live.

The Portland Armed Career Criminal Task Force is and will continue to be a success as long as the support is received from state and local agencies, the district attorney's offices, the U.S. attorney's office, and the federal judges who are hearing the cases. This type of legislation is an important tool for all of law enforcement and one that should be used to help stem the tide of the rising crime problem.

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[5] The BIA denied waiver of deportation because of Vargas's prior criminal record. In so doing, it deferred to the IJ's conclusions regarding the serious nature of the 1983 offense and Vargas's failure to rehabilitate. In 1975, Vargas had been convicted of possession with intent to distribute a controlled substance. As a result of that conviction, Vargas was ordered deported from the country. However, in 1977 the BIA granted Vargas a waiver of deportation which allowed him to remain in the United States.

Following this earlier waiver of deportation, notwithstanding his conviction of a similar charge, Vargas again was convicted of a narcotics offense in 1983. Moreover, he admitted at his deportation hearing that he obtained the drug in order to sell it. The BIA supported its conclusion to deny relief with a reasoned explanation based on legitimate concerns. It did not abuse its discretion in denying waiver of deportation.

Vargas' appeal regarding his due process claim is DISMISSED. The decision of the BIA denying Vargas' request for a waiver of deportation is AFFIRMED.

UNITED STATES of America,
Plaintiff-Appellee,

v.

Arthur Minkoff CLAWSON,
Defendant-Appellant.

No. 86-3150.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 8, 1987.

Decided Nov. 5, 1987.

Defendant was charged with being a felon in possession of a firearm. Subsequent to denial of defendant's motions to dismiss and suppress, 644 F.Supp. 187, defendant was convicted in the United States District Court for the District of Oregon, Owen M. Panner, Chief Judge, of being a felon in possession of a firearm and sentenced to an enhanced penalty under Armed Career Criminal provision. He appealed. The Court of Appeals, Goodwin, Circuit Judge, held that: (1) defendant's signed affidavit of ownership in support of his motion in state court for return of property was admissible in federal prosecution to prove that defendant claimed to own gun; (2) conclusion that gun traveled in interstate commerce, given its German manufacture, was sufficient to prove "interstate transportation" element; and (3) Armed Career Criminal Act did not deny equal protection by enhancing sentences of those convicted of burglary and robbery as opposed to those convicted of all other felonies.

Affirmed.

1. Criminal Law ⇐393(1)

Defendant voluntarily made his affidavit of ownership of pistol in support of his civil motion in state court for return of things seized, and affidavit was admissible in subsequent federal prosecution of defendant for being a felon in possession of a firearm, as proof of his claim to ownership of the gun, and its admission did not violate *Simmons* standard, applicable to suppression motions. U.S.C.A. Const.Amends. 4, 5; 18 U.S.C.App.(1982 Ed.) §§ 1201 et seq., 1202(a).

2. Criminal Law ⇐393(1)

Defendant's affidavit of ownership of pistol seized by police which defendant submitted in support of his state court motion for return of things seized was not subject to exclusion for injecting collateral issues that were confusing and prejudicial in federal prosecution of defendant for being a felon in possession of a firearm; document was relevant to the federal prosecution and was made voluntarily, and defendant refused district court's offer to mask irrelevant information on affidavit indicating that defendant was in state custody on unrelated charges, but instead objected to document being received in any form. 18 U.S.C.App.(1982 Ed.) § 1202(a); Fed.Rules Evid.Rule 403, 28 U.S.C.A.

3. Criminal Law ⇨422(1)

Evidence of coparticipant's altercation with police officer in course of arrest of defendant and coparticipant had more than slight probative value, for purposes of defendant's relevancy objection, in prosecution of defendant for being a felon in possession of a firearm, where testimony concerning the altercation helped complete picture of events that led to discovery of defendant's gun and thereby gave jury basis on which to resolve important conflict in testimony between defendant and arresting officer. 18 U.S.C.App.(1982 Ed.) § 1202(a).

4. Criminal Law ⇨422(1)

Probative value of evidence concerning coparticipant's altercation with police officer in course of arrest of defendant and coparticipant was not outweighed by potential prejudicial effect for purposes of defendant's prosecution for being a felon in possession of a firearm, where testimony concerning altercation helped complete picture of events that led to discovery of defendant's gun and thereby gave jury basis on which to resolve important conflict in testimony between defendant and arresting officer. 18 U.S.C.App.(1982 Ed.) § 1202(a).

5. Criminal Law ⇨339

Reliance upon a standard reference work as to identification of pistol and location of its manufacture provided adequate foundation for witness' testimony concerning "interstate transportation" element of felon in possession of a firearm, even though witness performed no test upon the gun. 18 U.S.C.App.(1982 Ed.) § 1202(a).

6. Weapons ⇨17(4)

Witness' testimony that, given gun's German manufacture, it must have traveled in interstate commerce, was sufficient to prove "interstate commerce element" of offense of felon in possession of a firearm; Government had no duty to prove that the counterfeit pistol was not manufactured in the state of its possession. 18 U.S.C. App.(1982 Ed.) § 1202(a).

7. Arrest ⇨63.5(5)

Tip received by officers as to defendant's and coparticipant's involvement in forgeries and corroboration resulting from officers' observations of defendant and coparticipant gave rise to articulable suspicion that justified investigative stop, under either Oregon law or under test applied by federal courts.

8. Criminal Law ⇨1158(2)

Trial court's rejection of defendant's claim that arresting officers seized him with excessive force from the outset of investigatory stop was not clearly erroneous.

9. Criminal Law ⇨986.2(4)

Defendant was entitled to collaterally attack his prior conviction where prior conviction was used to determine the punishment for being a felon in possession of a firearm rather than to define the offense. 18 U.S.C.App.(1982 Ed.) § 1202(a).

10. Criminal Law ⇨641.[illegible](2)

For purposes of defendant's collateral attack on prior conviction, there was no showing that his attorney refrained from taking any appropriate action because of alleged conflict of interest, based on representation of codefendants, and defendant therefore failed to show that he was deprived of effective assistance of counsel with regard to that conviction. U.S.C.A. Const.Amend. 6.

11. Criminal Law ⇨641.13(7)

For purposes of defendant's collateral attack on prior conviction, defendant neither sought to appeal nor requested another attorney following notification by his counsel that there were no grounds for appeal of pre-*Anders* conviction, and defendant was not denied his right to appeal state conviction due to alleged failure of counsel to pursue appeal. U.S.C.A. Const. Amend. 6.

12. Constitutional Law ⇨250.3(1)
Criminal Law ⇨1201.5

Armed Career Criminal Act did not deny equal protection by enhancing sentences of those convicted of burglary and robbery as opposed to those convicted of all other felonies, since it was reasonable to increase firearms penalty for defendants who had three previous robbery or burglary convictions in order to discourage crimes frequently practiced as careers and to discourage the use of guns in such cases. U.S.C.A. Const.Amend. 14; 18 U.S.C. App.(1982 Ed.) § 1202(a).

Frank Noonan, Portland, Or., for plaintiff-appellee.

Steven T. Wax, Portland, Or., for defendant-appellant.

Appeal from the United States District Court for the District of Oregon.

Before T. GOODWIN and FERGUSON, Circuit Judges, and STEPHENS,* District Judge.

GOODWIN, Circuit Judge:

Arthur Minkoff Clawson was convicted of one count of being a felon in possession of a firearm, in violation of 18 U.S.C. App. § 1202(a).[1] At the government's request, the court imposed an enhanced penalty under § 1202(a)'s Armed Career Criminal provision. On appeal Clawson challenges: (1) the admissibility of evidence, (2) the sufficiency of proof of the interstate transportation element of the firearm offense, (3) the lawfulness of the stop of the car in which Clawson was a passenger, (4) the constitutionality of one of the prior convictions used to enhance his sentence, and (5) the constitutionality of the Armed Career Criminal Act.

On November 10, 1985, two Portland police officers, acting on an informant's tip regarding a check forgery operation, staked out the Chumaree Motel in Portland. In the motel parking lot, detectives Larry Kochever and Carolyn Wooden-Johnson observed two cars that matched the description given by the informant of the suspects' vehicles. When the officers suspected that the forgery suspects were attempting to leave the parking lot in one of the cars, Officer Wooden-Johnson pulled the unmarked police car up behind them. Clawson then got out of the car.

According to Officer Kochever, he identified himself as a police officer and told Clawson that he would like to talk to him. In response, Kochever said, Clawson began running and, after taking a few steps, reached for the small of his back as if to draw a gun from the waistband on the back of his pants. Kochever then drew his gun and ordered Clawson to freeze. Clawson stopped.

Clawson testified that he never tried to run and that Kochever pointed his gun at him without provocation, saying "Freeze or I'll shoot." He said that he was merely trying to put on a jacket and made no menacing moves.

In the meantime, Officer Wooden-Johnson testified, she had told the car's driver, Penn, to stop. Penn refused, pulling the car away suddenly then stopping a short distance away. This happened a second time, with Penn telling the officer that she had a gun. When Wooden-Johnson approached the car a third time, she saw Penn reach for what appeared to be a gun. Wooden-Johnson shot and wounded Penn.

During the altercation between Penn and Wooden-Johnson, Officer Kochever made Clawson lie on the ground and handcuffed his hands behind his back. Officer Kochever testified that Clawson then rolled on his side and made a movement as if he were drawing something out of his waistband. The officer then grabbed Clawson by his jacket and pushed him back to the ground. Kochever testified that he heard something hit the ground, then saw the gun on the ground behind Clawson. Clawson testified that he was wearing Penn's jacket by mistake and had been unaware that the gun was in the pocket.

Evidentiary Issues

[1] Before trial, Clawson signed an affidavit of ownership in support of a motion

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* Honorable Albert Lee Stephens, Jr., Senior United States District Judge, Central District of California, sitting by designation.

[1] Section 1202(a) was repealed effective 180 days after May 19, 1986, by the Firearms Owners' Protection Act, Pub.L. 99-308, § 104(b) (1986). Section 1202(a) remains applicable in this case because the conviction was final before the statute's repeal became effective.

in state court for return of property, including a pistol the police had seized. The government relied on Clawson's state-court affidavit in this trial to prove that Clawson claimed to own the gun. Clawson argues that the district court erred in permitting the government to introduce the evidence, citing *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968).

Simmons held that when a defendant testifies in support of a motion to suppress evidence on fourth amendment grounds, his testimony may not be admitted against him at trial to prove that he possessed the evidence. *Simmons* rested upon the undesirability of forcing the defendant to choose between his fifth amendment right against self-incrimination and his fourth amendment right to object to government seizure.

However, *Simmons* does not extend to all situations in which the defendant makes pre-trial motions indicating his ownership of seized evidence. *See e.g., United States v. Flores*, 679 F.2d 173, 177–78 (9th Cir. 1982), *cert. denied*, 459 U.S. 1148, 103 S.Ct. 791, 74 L.Ed.2d 996 (1983). The *Flores* court rejected the defendant's argument that *Simmons* applied to voluntary admissions. *Id.* Clawson voluntarily made his affidavit in support of a motion for return of things seized. The motion was a civil motion in state court. He was not forced to choose between constitutional rights. The trial judge correctly ruled that *Flores* —not *Simmons*—applies.

[2] Clawson also argues that his affidavit should have been excluded under Fed.R. Evid. 403 because it injected collateral issues that were confusing and prejudicial. The affidavit showed on its face that he was a convict in state custody on unrelated charges. The court offered to mask the irrelevant information, but Clawson objected to the document being received in any form. The document was relevant and was made voluntarily. There was no error in receiving it.

[3] Clawson also argues that the district court erred in admitting evidence regarding Penn's altercation with Officer Wooden–Johnson. He contends that the testimony had slight relevance, and that it was unfairly prejudicial. There was no error. The evidence had more than slight probative value. This is a situation in which parties had a hand in creating their own evidentiary problem. Clawson's version of events differed in crucial respects from Officer Kochever's. Credibility was an issue. The testimony regarding Penn's confrontation with Wooden–Johnson helped complete the picture of events that led to the discovery of Clawson's gun, and thereby gave the jury a basis on which to resolve an important conflict in the testimony.

[4] In determining whether the prejudicial effect of the evidence so far outweighs its probative value that the evidence should be excluded, trial courts are given wide discretion. *United States v. Federico*, 658 F.2d 1337, 1342 (9th Cir. 1981). Given the importance of presenting the jury with an accurate version of Clawson's actions, the trial court did not abuse its discretion in admitting evidence concerning Penn's action.

Interstate Transportation Element

[5] Clawson attacks the trial court's ruling that the government proved that the unlawfully possessed gun taken from him moved in interstate commerce, as required by § 1202(a). Clawson claims that the testimony of Alcohol, Tobacco and Firearms Agent Tommy Whitman concerning the manufacture of the gun and the likelihood that it moved in interstate commerce lacked foundation and was insufficient as a matter of law. The trial court correctly rejected Clawson's motions to strike Whitman's testimony and for a judgment of acquittal based on the insufficiency of the testimony.

Clawson's attack upon Whitman's testimony that the gun was a Mauser semi-automatic pistol manufactured in Germany centers upon Whitman's comparison of the gun with pictures in catalogs, firearms manuals, and reference publications. We reject Clawson's suggestion that Whitman's testimony lacked adequate foundation merely because he performed no tests upon the gun. It was not error for the trial court to conclude that Whitman's reliance upon standard reference works provided adequate foundation for his testimony.

[6] We also reject Clawson's argument that the government's evidence concerning the interstate commerce element of the offense was insufficient as a matter of law. The government is required to prove beyond a reasonable doubt the interstate transportation element of the offense. *See Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (holding that each element of a crime must be proved beyond a reasonable doubt). The government fulfilled this burden.

Whitman concluded that, given the gun's German manufacture, it must have traveled in interstate commerce. *See United States v. Gann,* 732 F.2d 714, 724 (9th Cir.), *cert. denied,* 469 U.S. 1034, 105 S.Ct. 505, 83 L.Ed.2d 397 (1984) (holding proper the admission into evidence of expert testimony concerning the location of a weapon's manufacturing plant to demonstrate that the firearm had previously traveled in interstate commerce). The government has no duty to prove that counterfeit Mauser pistols are not being manufactured in Oregon. The evidence was sufficient to support the factual finding that the gun moved in interstate commerce.

Legality of the Stop

Clawson made an unsuccessful pre-trial motion to suppress the fruits of the stop of Penn's car. The trial court found that the city police had an adequate basis for stopping the car and that the degree of force used did not exceed the scope of an investigative stop. 644 F.Supp. 187 (D.Or.1986). We agree. This is a legal issue reviewable *de novo. United States v. Maybusher,* 735 F.2d 366, 371 n. 1 (9th Cir.1984), *cert. denied,* 469 U.S. 1110, 105 S.Ct. 790, 83 L.Ed.2d 783 (1985).

Clawson contends that even if the stop was permissible under *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), Oregon's more restrictive rules regarding temporary detention invalidate the stop. However, the district court's ruling was correct whether state or federal law is applied.

[7] Oregon law, in accord with federal law, allows a law enforcement officer who reasonably suspects that a person has committed a crime to stop and question that person about the crime. Or.Rev.Stat. § 131.615 (1984). Oregon case law establishes that this codification of an officer's authority to stop a person is based on the rationale justifying "stop and frisk" in *Terry,* 392 U.S. at 20–27, 88 S.Ct. at 1879–83. *See State v. Valdez,* 277 Or. 621, 561 P.2d 1006, 1009 (1977); *State v. Brown,* 31 Or. App. 501, 570 P.2d 1001, 1003 (1977). Thus, Oregon courts use the same objective, reasonable suspicion test as do federal courts in analyzing the propriety of a temporary detention. *Valdez,* 561 P.2d at 1009; *Brown,* 570 P.2d at 1003.

The Oregon statute is more restrictive than the *Terry* rule in that it does not necessarily authorize an officer to conduct an investigatory stop when the officer merely suspects a person of preparing to commit a crime. Or.Rev.Stat. § 131.615 (1984). But this statute is inapplicable here because Officers Kochever and Wooden-Johnson suspected with good reason that Clawson and Penn had already committed a series of forgeries. Because the reasonableness standard is the same under the facts of this case for both Oregon and federal law, it makes no difference which law is applied. *United States v. Grajeda,* 587 F.2d 1017, 1019 (9th Cir.1978) (applying California law).

The confrontation between the officers and the suspects began with an investigative stop rather than an arrest. Officer Wooden-Johnson pulled her car behind Penn's car and did not block it. The initial detention was brief. Further detention was necessary only because of the suspects' subsequent actions. Subsequent conduct also made it necessary for the officers to draw their weapons.

A brief investigatory stop like the one conducted here is permissible if, "under the totality of circumstances, the officer is aware of articulable facts leading to a reasonable or founded suspicion that the person stopped is engaged in criminal activity." *United States v. Corral-Villavicencio,* 753 F.2d 785, 789–90 (9th Cir.1985). The officers in this case acted only after corroborating several details of the informant's tip. The informant, who had been arrested while cashing forged checks, told the police that the two suspects were running a forgery operation. She told them that "Art" and "Kit" were staying at the Chumaree Motel and that they owned a brown El Camino and a blue car. The officers found a brown El Camino in the motel's parking lot. While Kochever was examining the brown El Camino, the officers saw a blue car whose driver started to pull into the parking lot but backed up after the car's headlights illuminated Officer Kochever. Officer Wooden–Johnson saw the car's passenger get out of the car and walk away from the motel. Next, Penn, the driver of the blue car, came over to Kochever and told him that the El Camino was hers.

Next, the officers saw Penn go into a motel room. Soon afterwards, they saw Penn emerge from the motel room and return to the blue car. They then saw an individual emerge from the bushes and get into the car on the passenger side. The tip received by the officers and the corroboration resulting from the officers' observations gave rise to an articulable suspicion that justified the officers' investigative stop.

[8] Clawson also challenges the credibility of Kochever's testimony regarding the manner in which Kochever approached Clawson. Clawson says that Kochever seized him with excessive force from the outset. The clearly erroneous standard is employed when reviewing the trial court's ruling on the credibility of a witness. Given that the trial court specifically found Clawson's version of the facts incredible, Clawson has the burden of showing that the trial court's decision was clearly erroneous. He fails to carry that burden.

Constitutionality of Prior Convictions

[9] Under the penalty enhancement provisions of § 1202(a), an individual having three or more prior convictions for robbery or burglary must be sentenced to at least 15 years in prison. All other individuals who have committed a felony are subject to a sentence of not more than two years. Clawson has been convicted of robbery or burglary on three occasions, in 1966, 1973, and 1975. On appeal, Clawson argues that the 1966 conviction was unconstitutional and should not be counted as one of the three convictions required to trigger the penalty enhancement provision.

The government, relying upon *United States v. Lewis,* 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), mistakenly contends that Clawson may not attack the validity of the challenged prior conviction. In *Lewis,* the Court upheld the defendant's conviction under § 1202(a) even though the previous conviction upon which the defendant's felon status was predicated might have been constitutionally invalid. *Id.* at 65, 100 S.Ct. at 920. The Court held that application of the statute was appropriate even though the previous conviction might have been invalid because the defendant was part of a dangerous group and should not possess a firearm. *Id.* at 66, 100 S.Ct. at 921.

However, *Lewis* was decided before the 1984 amendment to § 1202(a) that added the penalty enhancement provision at issue here. Pub.L. 98–473, § 1802 (1984). Under *Burgett v. Texas,* 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967), defendants may collaterally attack prior convictions when faced with a sentence enhancement statute. *Lewis* is inapplicable where prior convictions are used to determine the punishment, rather than to define the offense. Under *Burgett,* we thus must consider Clawson's collateral attack upon his 1966 conviction.

[10] Clawson was convicted in 1966 for assault and robbery while armed with a deadly weapon. Clawson argues that he was denied effective assistance of counsel for two reasons: (1) trial counsel also represented a co-defendant and therefore per se had a conflict of interest, and (2) counsel

failed to pursue an appeal or file an *Anders* brief. Because Clawson's co-defendant pleaded guilty before Clawson's trial, the joint representation created no conflict of interest. In *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980), the Court held that an accused person objecting to joint representation and claiming conflict of interest must demonstrate an actual conflict adversely affecting his attorney's performance. *Id.* at 350, 100 S.Ct. at 1719. *See also United States v. Hearst*, 638 F.2d 1190, 1193–94 (9th Cir. 1980), *cert. denied*, 451 U.S. 938, 101 S.Ct. 2018, 68 L.Ed.2d 325 (1981). There must be a showing that the attorney refrained from taking some appropriate action because of the conflict of interest. In the present case, nothing in the record shows the attorney's defense of Clawson was influenced by his previous representation of the co-defendant.

Clawson also attacks the 1966 conviction for counsel's failure to pursue an appeal, citing *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Under *State v. Horine*, 64 Or.App. 532, 669 P.2d 797, *rev. denied*, 296 Or. 237, 675 P.2d 490 (1983), *petition dismissed*, 466 U.S. 934, 104 S.Ct. 1932, 80 L.Ed.2d 477 (1983), an Oregon lawyer is not required to appeal if he, "in exercising professional competence and judgment, determines that there are no non-frivolous issues to raise on appeal." *Id.* at 805. The counsel assigned to represent Clawson on appeal examined the record and applicable law and concluded that "the defendant has no meritorious ground for appeal" before he withdrew without submitting an *Anders* brief. *See id.* at 806 (noting that the constitution requires only that the attorney have "reviewed the law and the record as an advocate and determine[ ] that there are no non-frivolous issues to be raised on appeal").

[11] According to *Horine*, the appellant will be allowed to raise whatever issues he chooses after the attorney notifies him and the court that there are no grounds for appeal. However, "[i]f the appellant *pro se* raises no issues, the conviction will be affirmed." *Id.* Clawson neither sought to appeal nor requested another attorney. Thus, the State of Oregon did not deny Clawson on appeal, and he presents no claim of error in his pre-*Anders* conviction that would justify setting aside that conviction at this time. Accordingly, his collateral attack on the 1966 conviction fails.

Armed Career Criminal Act

[12] Clawson contends that the Armed Career Criminal Act denies equal protection because there is no rational basis for enhancing the sentences of those convicted of burglary and robbery as opposed to those convicted of all other felonies. He misunderstands the power of Congress.

In *Lewis*, the Supreme Court addressed the equal protection argument regarding § 1202(a) by stating that the distinctions must have "some relevance to the purpose for which a statute is made." 445 U.S. at 65, 100 S.Ct. at 920. We must deem Congress to have acted on a rational basis as long as the predicate crimes of robbery and burglary have a bearing on the community peace. *Id.* at 66, 100 S.Ct. at 921. The statute is not rendered irrational simply because Congress knew about other crimes and did not make them subject to enhancement. The courts do not substitute their views about a statute's wisdom for those of Congress unless the statute is arbitrary. *Flemming v. Nestor*, 363 U.S. 603, 611, 80 S.Ct. 1367, 1373, 4 L.Ed.2d 1435 (1960). Congress reasonably could have increased the firearms penalty for defendants who have three previous robbery or burglary convictions in order to discourage crimes that are infrequently practiced as careers and to discourage the use of guns in such cases. Nothing in the constitution impairs the power of Congress to legislate in this matter.

Affirmed.

EASTERN PENNSYLVANIA

Updating their May 9, 1988 response to Senator Specter's office:

William Sinwell was sentenced on May 23, 1988, to three months incarceration to be followed by five years probation.

Douglas Smith was indicted on May 10, 1988, for possession of a firearm by a convicted felon. Trial was scheduled for July 5, 1988.

Jerry Leon Selby's trial commenced in June 1988.

Michael McLeod entered the Philadelphia Savings Fund Society on January 8, 1988 with Charles Beaufert, planning to rob the bank. Beaufert fought with the bank security guard, causing him serious bodily harm, and the guard dropped his service revolver. McLeod grabbed the weapon, threatened a customer with it and fled the bank with the gun.

McLeod was arrested March 23, 1988, on a complaint and warrant and was ordered held without bail. On May 9, 1988, he was indicted and charged with conspiracy, attempted bank robbery, entering a bank with intent to commit a felony, and possession of a firearm by a convicted felon. His prior criminal record includes four violent felony convictions thus qualifying him as an Armed Career Criminal. He is awaiting trial.

MIDDLE PENNSYLVANIA

Letter dated June 27, 1988, sent directly to Senator Specter (copy enclosed).

U.S. Department of Justice

United States Attorney
Middle District of Pennsylvania

Federal Building, 228 Walnut Street
Post Office Box 793
Harrisburg, Pennsylvania 17108

17/782-4482
FTS/390-4482

1988 JUL -8 PM 4:28

JJW:lkh

June 27, 1988

The Honorable Arlen Specter
United States Senator
Washington, D.C. 20510

ATTN: MARGARET MORTON

Dear Senator Specter:

Pursuant to your recent request received on June 9, 1988, I am writing to provide summaries of four prosecutions brought under the Armed Career Criminal Act in the Middle District of Pennsylvania.

1) United States v. John E. Wiser, Cr. No. 86-00059

Defendant Wiser was indicted on March 19, 1986 and charged with sending an explosive device through the mail and unlawful possession of firearms. The second charge resulted from the execution of a search warrant at defendant's residence which led to the seizure of several long rifles.

Defendant Wiser had been convicted of burglary in 1953 (Huntingdon County, Pennsylvania) and twice in 1957 (Juniata County, Pennsylvania and Fulton County, Pennsylvania).

Prior to trial, the two counts of the indictment were severed. The Armed Career Criminal case was tried first and the defendant was convicted on August 26, 1986. The trial on the charge of sending an explosive device through the mail resulted in a hung jury. In the retrial, Defendant Wiser was acquitted by the jury on February 5, 1987.

On March 16, 1987, Defendant Wiser was sentenced for unlawful possession of firearms pursuant to the Armed Career Criminal Act. In imposing the mandatory fifteen year term of imprisonment, the

Court strongly questioned the fairness of the sentence and literally urged the appellate court to reverse the mandatory minimum sentencing provision. In the interests of justice, I subsequently authorized a plea agreement wherein Defendant Wiser agreed to enter a guilty plea to unlawful receipt of a firearm by a convicted felon and imposition of the maximum five year term of imprisonment in return for dismissal of Armed Career Criminal Act charge. This obviated any appeal by Wiser based on the mandatory sentencing requirements of the Act - an issue clearly raised by the District Judge's sentencing comments. This plea agreement was accepted by the Court on May 5, 1987 and Defendant Wiser was sentenced to five years imprisonment.

2) United States v. Robert J. Balascsak, Cr. No. 87-00026

Defendant Balascsak was indicted on March 3, 1987 and charged with the illegal possession of a firearm by a convicted felon. The charge stemmed from an incident in September 1986, when the defendant was involved in a shooting at a bar in Bloomsburg, PA.

Defendant Balascsak had been previously convicted in 1981 and 1982 of four separate burglaries in Bucks County, Pennsylvania. The defendant had also been convicted in this District in 1985 of receipt of a firearm by a felon.

The original indictment was superseded on April 14, 1987 and again on May 12, 1987, and Defendant Balascsak was charged with three separate violations: 1) false statement by convicted felon to acquire firearm; 2) unlawful receipt of firearm by convicted felon; and 3) possession of firearm by convicted felon. On October 1, 1987, defendant entered a guilty plea to the third count of the indictment.

On January 20, 1988, Defendant Balascsak was sentenced pursuant to the Armed Career Criminal Act to 15 years imprisonment.

3) United States v. David D. Schoolcraft, Cr. No. 88-00024

Defendant Schoolcraft was indicted on February 10, 1988 and charged with false statement by convicted felon to acquire a firearm and unlawful possession of a firearm by a convicted felon. The charges stemmed from Schoolcraft's arrest for rape in September, 1987, when a firearm was recovered from his vehicle.

Defendant Schoolcraft's criminal record dates back to 1977 and includes arrests for armed robbery, burglary, receiving stolen property, theft, rape and escape; among his convictions are three for armed robbery in York County in 1983.

Defendant Scholcraft's arraignment was held on March 30, 1988, he entered a plea of not guilty, and pretrial motions are pending. Given Schoolcraft's prior record, I intend to press for the 15 year mandatory minimum. Defendant Schoolcraft is presently being detained without bail.

4) United States v. Joseph DeCristino, Cr. No. 87-00210

Defendant DeCristino was charged with a violation of 18 U.S.C. § 2251 after the controlled delivery of child pornography to his residence during the course of a Postal Inspection Service "sting" operation. A search warrant was executed on DeCristino's residence, and while no additional child pornography was found, two handguns were found in the bedroom occupied by DeCristino and his wife. This resulted in charges being filed under the Armed Career Criminal Statute based on two prior burglary convictions and a robbery conviction in the mid-seventies.

Since this matter arose out of a "sting" operation, the investigation continued after DeCristino's arrest with DeCristino's counsel taking the strong position that his client had not knowingly ordered child pornography and requesting the opportunity for his client to take a polygraph on this issue. The child pornography that had been sent to DeCristino had been found in his residence, torn up, and in the bottom of a garbage receptacle. DeCristino was administered a polygraph examination on the issue of whether he knowingly ordered this material and he passed. In light of the above facts, we allowed DeCristino to enter a guilty plea to the weapons charge and withdrew our notice of sentencing under the Armed Career Criminal Act. On December 22, 1987, DeCristino entered his guilty plea, was sentenced to two years in prison with all but eight months of that term suspended.

5) Pending Investigations

It has been reported to me that two pending Armed Career Act investigations will be ripe for my final prosecutive determination within the next 30 days. If these matters result in indictments, I will immediately provide you with supplemental summaries.

Of the four Armed Career Criminal Act prosecutions initiated in the District, we have found it necessary to plea bargain to lesser offenses in those circumstances where the initial federal charges giving rise to the investigation are shown to have significant factual and legal problems. In those cases where violence is involved or the charges giving rise to the initial investigation are substantial and result in conviction, we follow through and insist upon the imposition of the mandatory minimum Armed Career Criminal Act penalties.

As you are aware, the Federal Bureau of Alcohol, Tobacco and Firearms does not have a full-time investigator assigned to the Middle District of Pennsylvania, and accordingly, the material contained in this letter has been basically developed through referrals by local investigative agencies and district attorneys. I believe that additional Armed Career Criminal Act cases can be developed in the Middle District of Pennsylvania if the Bureau of Alcohol, Tobacco and Firearms assigned a full-time agent to work the Middle District.

In addition, efforts are continuing at educating the district attorneys and local police officers on the existence of the Armed Career Criminal Act and the circumstances under which it can be applied. This office has been conducting seminars for state and local law enforcement officers on narcotics conspiracy prosecutions and we always cover the Armed Career Criminal Act and its application as part of those seminars. I have noted that local officers are always surprised to find out that the Federal Firearms Statutes, including the Armed Career Criminal Act, apply to rifles as well as handguns, and, invariably, at the conclusion of these seminars, we receive several investigative leads dealing with armed career criminals. Based on this experience, I believe there is still a need to "get the word out" concerning the scope and application of the Federal statute.

I remain convinced that the provisions of the Act provide an important weapon in our war on crime. If any further information is needed, please do not hesitate to immediately contact me.

Sincerely,

Jim West

JAMES J. WEST
United States Attorney

RHODE ISLAND

A) Since 1984, the District has initiated five prosecutions. Three are still in the investigation phase and two have gone to trial.

B) Not reported

C) In one of the two, the government dismissed the ACC information after conviction when the defendant raised a collateral challenge to several of the underlying convictions. Because of the age of the convictions, sufficient evidence to meet the challenge was not available. The defendant was sentenced to four years in prison and an appeal is pending.

The other case went to trial and conviction. The defendant who has three prior violent felony convictions (attempted murder charges pleaded down to assaults) was sentenced to the mandatory minimum 15 years and an appeal is pending.

SOUTH DAKOTA

A) The District handled two cases involving the Act.

B) Not reported

C) Not reported

EASTERN TENESSEE

A) The District has handled one arrest, prosecution and conviction which is currently on appeal in the Sixth Circuit.

B) The defendant did not plead guilty.

C) United States v. Curtis Lee Brewer, James Phillip Brewer and Giles Erwin Ferguson, CR-1-86-43(EDTN)

In August 1985, the defendants were stopped for traffic violations. Because burglary tools were visible in their vehicle, a search warrant was obtained, leading to the discovery of a rifle and silencer. Due to the lengthy records and dangerous nature of the defendants, prosecution was undertaken under the Act. After trial, they were convicted and sentenced to terms of fifteen and twenty years.

On appeal, the Sixth Circuit panel has held the Act unconstitutional in sweeping terms. A petition for rehearing *en banc* is pending.

WESTERN TENNESSEE

A) The District has had 25 arrests, resulting in 25 prosecutions by way of complaint or indictment. Fifteen defendants have been convicted and ten are awaiting trial.

B) Not reported.

C) Clyde Turner - 1202(a)(1)

Mr. Turner had three previous convictions for armed robbery, served time for petit larceny and has over 14 arrests to his credit. When officers responded to an assault complaint, he was armed with an RG Industries revolver. He was found guilty and sentenced to 15 years in prison in October 1987.

John W. Jordan - 1202(a)(1)

Mr. Jordan was previously convicted of robbery and assault to commit voluntary manslaughter, burglary, larceny, receiving and concealing, robbery with a deadly weapon and other offenses. Police, responding to a "shots fired complaint," discovered him armed with an RG Industries revolver. He was sentenced in May 1987 to two years.

Billy G. Walker - 924(c)

Mr. Walker had numerous arrests and was convicted of concealing stolen property, altering VIN numbers, and manufacturing and possession of marijuana for resale. When arrested while guarding and harvesting a marijuana field, he was in possession of a Stevens .20 gauge shotgun. The case is pending.

Junior R. Sweat - 924(e)

Mr. Sweat was previously convicted of three counts of grand larceny, four counts of second degree burglary, six counts of receiving and concealing stolen property, four counts of arson, one count of aggravated assault and one count of a convicted felon carrying firearms. He was arrested for possession of narcotics and convicted felon carrying a firearm. He was sentenced in February 1988 to 15 years.

James R. Lewis - 924(c)

Mr. Lewis was previously convicted of conspiracy and other related charges. He was on federal probation at the time of his arrest for drug trafficking and had two fully loaded semi-automatic pistols with him in the car and was wearing a bullet-proof vest. He was sentenced in June 1988.

Rena C. Kirk and Nolan C. Turner - 924(c)

Both were arrested with two kilos of cocaine and two revolvers and were sentenced in June 1988.

Jimmy Miller - 924(c)

Mr. Miller delivered ten grams of heroin while armed and was sentenced in April 1988 to five years.

Willie L. Moore - 924(e)

Previously convicted of assault with intent to commit robbery and shooting a missile calculated to produce death or great bodily harm, a search of his residence recovered 1-1/2 grams of cocaine and two loaded handguns.

Richard L. Stoops - 924(c)

Arrested while in possession of marijuana, three firearms, $3,264 in cash and drug paraphernalia, he pled in May 1988.

James E. Collier - 924(c)

Charged with possession of a loaded shotgun, he pled in June 1988.

Harry J. Windom - 924(c)

Mr. Windom pled in May 1988 after a search warrant execution recovered 47.2 grams of cocaine, $1,000 in cash and a firearm. He was armed at the time of the warrant's execution.

Wyatt Austin - 924(c)

Armed when arrested, he had 149 packets of crack and 15 marijuana envelopes. A guilty verdict was returned in May 1988. He is awaiting sentencing.

William B. Taylor - 924(e)

The case is set for trial in August 1988.

Teran K. Davis - 924(c)

Ms. Davis delivered four ounces of cocaine to undercover police and had a .38 caliber revolver in the car she drove to the delivery point. She is awaiting sentencing.

Ovell Irby - 924(e)

Through an administrative error, Mr. Irby was allowed to plead to a state charge. He was arraigned in June 1988 and his sentencing is pending.

Cedric Jones - 924(c)

Stopped after surveillance of drug activities, 34 packets of cocaine and two firearms were seized. The case is pending.

Henry Hebron - 924(c)

This case is pending.

Thomas J. Esposito and Leonard M. Yeager - 924(e)

This case is pending.

Jessie L. Bishop - 924(e)

Mr. Bishop had nine prior convictions for felonies and was arrested while in possession of a weapon made from a shotgun.

Maurice Sykes - 924(c)

He was arrested as a result of surveillance of his drug activities. He pled in May 1988 and is awaiting sentencing.

Shedrick W. Seals - 924(c)

A convicted felon, Mr. Seals was arrested while in possession of a firearm, methamphetamines and $10,089.68. He pled in June 1988 and is awaiting sentencing.

Robert L. Bolden - 924(c)

When Mr. Bolden was arrested, he was in possession of cocaine and a firearm. In March 1988 he was sentenced to five years.

Anthony B. Bovan - 924(e)

He was apprehended after a shooting he was involved in with a black female. He had a firearm at the time of his arrest. The matter is pending.

EASTERN TEXAS

A) The District handled eight cases involving 18 U.S.C. §§924(c) & (e) involving convicted felons in possession of firearms.

B) Not reported

C) Not reported

NORTHERN TEXAS

A) The District has handled nine cases involving 18 U.S.C. §924(e)(1).

B) Not reported

C)

Dennis Rus Kent

Indicted for violating 18 U.S.C. §922(g)(1) and 924(e)(1), Mr. Kent had four previous convictions for "violent felonies" and/or "serious drug offenses." When arrested in March 1987, Mr. Kent possessed a Smith and Wesson semi-automatic, fully loaded with fourteen rounds. He has been detained pending trial.

Ross Bateman Edwards

Indicted for violating 18 U.S.C. §922(g) and 924(e)(1), for pawning firearms while still on parole.

Tony Lynn Ussery

Indicted for violating 18 U.S.C. 922(a) and 924(e)(1).

George Marcus Afflick - 924(e)(1)

During a search warrant firearms were recovered.

Mitchell Ray Leonard

During a search several firearms were seized.

Eddie Charles Webb

Indicted for violating 922(g) and 924(e)(1), for possession in and affecting commerce a firearm. He is detained.

Mark Russell Long

Charged with possession in commerce and affecting commerce a firearm in violation of 18 U.S.C. §922(g)(1) and 924(e)(1).

James Thomas King

Arrested while in possession of firearms, he was indicted for their unlawful possession and controlled substance violations. He is a fugitive.

SOUTHERN TEXAS

A) The District received five for prosecutive merit. Two were declined due to conflict with the Petite Policy, two involved violations of 18 U.S.C. §1202(A)(1) Appendix and resulted in the conviction of both defendants with mandatory 15 year sentences. The final case concerns §924(e) violations and is pending action.

B) Not reported

C)

Robert A. Hall

In January 1988, Mr. Hall pled guilty to one count which related to felon in possession of a firearm. He was sentenced to 15 years under Section 3575 enhanced penalty provisions based on his prior four felony convictions for Burglary of Habitation. At the time of his arrest, Hall was found in possession of a .22 caliber pistol.

Leonard Ortega

In September 1986, Mr. Ortega was found to be in possession of a loaded .380 caliber handgun when he was arrested. In August 1987, he was indicted for felon in possession of a firearm as well as the enhanced penalty. Mr. Ortega was found guilty and sentenced to seven years in prison. After Alcohol, Tobacco and Firearms advised the United States Attorney's office of the 15 year mandatory minimum, a motion to resentence was filed and the original sentence was vacated and replaced with a 15 year sentence to serve.

Leo B. Rice

Mr. Rice, a three time convicted felon, was a member of an organized crime group. He was subpoenaed before a grand jury and fled to Mexico to avoid testifying. He was charged in May 1988 with obstruction of justice and a fugitive warrant was issued.

In April 1988, Mr. Rice boarded an airline flight with a concealed .38 revolver with five rounds of ammunition in his luggage. On April 28, 1988, a criminal complaint was filed charging him with possession of ammunition by a convicted felon.

VERMONT

A) The District has had a fair number of referrals for prosecution under the Act. With one exception, all resulted in conviction and imposition of the mandatory fifteen year prison term.

B) The Act is not utilized to obtain guilty pleas.

C) Most Act prosecutions are of individuals who fit a commonly understood definition of a career criminal. Several involved successor prosecutions to state investigations of burglary where the firearms forming the basis for the ACC prosecution were the proceeds of the burglary.

WESTERN VIRGINIA

A) The District has handled six matters under the Act. One matter is still pending.

B) Not reported

C) One defendant is scheduled for trial by jury in August 1988, two others entered guilty pleas under a plea agreement and the remaining three were found guilty by jury.

NORTHERN WEST VIRGINIA

A) The District has handled two arrests and two prosecutions which resulted in convictions.

B) Not reported

C)

United States v. Gordon

In October 1986 Clark Edward Gordon was charged with possession of a firearm by a convicted felon in violation of 18 U.S.C. 1202(a) (Appendix II). The grand jury returned a four-count indictment charging him with one count of transportation of a firearm by a convicted felon, one count of receipt of a firearm by a convicted felon, making false statements to acquire firearms and possession of a firearm by convicted felon, career offender. Trial commenced and he was convicted on the last three counts and acquitted on count one. Mr. Gordon was sentenced to five years on count two, five years on count three and 15 years on count four. The convictions were recently affirmed by the Fourth Circuit.

United States v. Richard Austin Martin

In February 1985 the grand jury returned a two-count indictment charging Mr. Martin with two counts of possession of a firearm by a convicted felon, a career offender. He was convicted of both counts and sentenced to 15 years with no eligibility for parole. The case is on appeal.

SOUTHERN WEST VIRGINIA

Negative report

EASTERN WISCONSIN

A) The District handled four arrests, nine indictments and four convictions

B) 18 U.S.C. §924(e) cases describe a defendant who is a "career criminal" who should be prosecuted as such. Therefore, the Act is not used as a lever to induce pleas to lesser offenses.

18 U.S.C. §924(c) cases describe a defendant who is charged with generally having committed a drug offense while carrying a dangerous weapon which presents a situation where the defendant is more than likely to receive more than the mandatory 5-year sentence for the underlying offense. Therefore, this statute may be utilized to induce a plea to the basic offense charged.

An example of the utilization of the §924(c) charge to obtain a plea to the underlying drug offense involves a defendant who, in return for dropping the §924(c) charge, pled to the basic drug charges and received a 12-year sentence. This compares with the case of another defendant who pled to both drug and §924(c) charges and received a total prison sentence of 11 years.

C) Joseph W. Dougherty and Terry L. Conner were convicted of armed bank robbery, a firearms count and a count of felon in possession of a firearm. Both individuals were sentenced to life as a result of the facts of the case and their prior convictions. The case is pending appeal.

An individual was indicted under the Act but due to a lack of proof, the indictment was dismissed.

Charles A. Karlin was found guilty of violating the Act by a jury in August 1986. He was apprehended by state authorities as he attempted to escape after committing a residential burglary. Police found a loaded .38 caliber revolver under the driver's seat of his vehicle. He had an extensive state criminal record and was previously punished as a repeat offender. Mr. Karlin was sentenced to 15 years.

Four other individuals were arrested in October 1987 with approximately two kilograms of cocaine, firearms and cash. Initially arrested on drug charges, they were later charged with 18 U.S.C. §924(c) offenses. Three individuals entered guilty pleas to various charges when the government dismissed the §924(c) count. They received prison sentences of 12, 4 and 4 years respectively. The other defendant pled guilty to both drug and §924(c) offenses and received a total prison term of 11 years.

Mike Drobac was arrested on drug charges surrounding the attempted delivery of approximately one-half kilogram of cocaine. Ultimately indicted on drug charges and the §924(c) count, he entered into a plea agreement whereby the §924(c) count was dropped for his plea to the drug offenses. Before he could be sentenced, he was murdered.

WESTERN WISCONSIN

A) The District prosecuted three individuals under 18 U.S.C. § 924(c).

B) Not reported

C) All three cases involved armed bank robberies and resulted in the defendants receiving substantial sentences and additional punishment as provided by the Act.

FY86 YEAR TO DATE AS OF 05/31/86 CASELOAD STATISTICS
OF CONTROLLED SUBSTANCES
CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
AL N	[illegible]	34	54	25	2	2	1	1	1	1	19	8	75	36
AL M	43	12	10	6	10	3	6	2	4	1	2		22	9
AL S	101	24	20	8	6	2	4	2	2		10	2	36	12
ALASK	34	30	23	19	2	1	2	1					25	20
ARIZO	337	194	173	98	23	16	20	10	8	6	98	66	299	180
AR E	35	25	23	11	3	3	3	3			8	3	34	17
AR W	6	2	5	3	2	2	2	2			5	1	12	6
CA N	205	96	97	51	19	10	16	9	2	1	9	7	124	68
CA C	247	123	123	52	22	9	19	7	3	2	19	10	164	71
COLOR	97	52	14	10							2	2	16	12
CONNE	32	17	2	2									2	2
DELAW	21	15	10	10	5	4	4	4	1		13	5	28	19
DC	113	71	73	45	19	8	14	7	5	1	23	7	115	60
FL N	110	60	72	35	33	25	33	25			21	19	126	79
FL S	753	330	327	152	204	81	176	72	28	9	65	33	596	266
GA N	117	53	54	25	11	5	8	5	3		6	1	69	31
GA M	33	7	11	8							14	2	25	10
GA S	41	27	53	21	9	3	9	3			16	3	73	27
HAWAI	36	25	7	6							2	2	9	8
IDAHO	17	3	1	1									1	1
IL N	213	68	47	25	5	5	7	4	1	1	2	2	57	32
IL S	31	15	27	20	5	3	8	3			1		36	23
IL C	42	26	37	20	6	2	6	2			7	3	50	25
IN N	80	43	27	16	3	2	3	2			2	2	32	20
IN S	57	19	39	11	2	1	2	1			1		42	12
N IOW	35	20	27	22	11	7	9	7	2				38	29
S IOW	2	2	5	4	2	2	1	1	1	1			7	6
KANSA	41	12	9	6							7	4	16	10
KY E	82	44	35	22	15	7	14	6	2	1	3	1	54	30
KY W	62	50	65	23	16	6	13	6	1		15	3	94	30
LA E	103	72	71	33	15	[illegible]	13	6	5	2	7	2	93	43
LA W	43	9	29	6	3	2	3	2			1	1	33	9
MAINE	56	37	57	[illegible]	[illegible]	4	5	4			3	6	82	30
MARYL	137	66	151	57	[illegible]	14	26	14	2		47	16	226	87
MA	63	44	[illegible]	16	12	7	10	9			2	2	52	27

[illegible] CONTROLLED SUBSTANCE [illegible]
CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEA DEF	GUILTY PLEA CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
MI E	253	53	123	65	14	6	13	5	5	1	15	5	156	56
MI W	[illegible]	26	22	14	2	2			3	2	3	2	28	18
MINNE	123	96	154	56	64	17	63	14	8	1	6	2	231	103
MS N	12	9	7	3	9	4	6	2	3	2	2		18	7
MS S	69	26	48	22	9	1			2	1	12	6	62	29
MO E	73	45	37	25	26	9	20	8	2	1	8	3	67	37
MO W	125	72	84	47	3	3	3	3			14	8	101	58
MONTA	76	33	26	14	3		3				3	1	32	13
NEBRA	23	16	63	26	1	1	1	1			3	1	67	26
NEVAD	55	26	20	7	1		1				19	7	40	14
NH	8	5	8	2	7	6	6	5	1	1	3	1	18	9
NEW J	121	35	29	2	3		2		2				33	8
NEW M	233	112	64	36	9	5	7	6	1	1	25	11	97	32
NY N	30	16	42	7									42	7
NY E	496	230	209	104	52	23	50	23	2	2	26	15	287	144
NY S	422	175	238	111	60	15	28	12	12	3	48	30	326	156
NY W	66	30	49	25	6	4	3	3	1	1	9	3	62	32
NC E	91	37	36	12	11	3	7	3	6		13	7	62	22
NC M	57	37	33	15	13	5	13	5			2	1	48	26
NC W	60	27	66	23	26	8	21	6	5	2	14	3	106	34
N DAK	22	14	21	11	1	1	1	1					22	12
OH N	67	36	60	32	1	1	1	1			4	3	65	36
OH S	158	104	112	56	14	8	14	6	2	2	11	8	139	72
OK N	49	12	19	9							2	1	21	10
OK E	3	3	6	5	12	2	10	2	2		5	1	23	8
OK W	85	40	71	38	5	4	4	3	1	1	8	3	84	45
OREGO	150	53	71	36	3	3	5	3	3		13	10	97	47
PA E	101	66	106	34	35	14	34	13	1	1	12	8	153	56
PA M	26	22	29	26	11	5	9	6	2	1			40	29
PA W	78	27	37	22	8	5	9	5			6	3	51	28
PUERT	153	93	93	53	19	9	17	9	2	1	8	3	120	65
RHODE	25	19	17	10	5	7	5	7			3	1	25	18
S CAR	51	27	28	15	1	1	1	1			7	3	36	20
S DAK	72	41	23	15	3	3	2	2	1	1	4	1	30	19
TN E	26	15	18	9	10	5	9	5	1		1		29	14

7/18/88

FY-3 YEAR TO DATE AS OF 05/31/88 CASELOAD STATISTICS
OF CONTROLLED SUBSTANCES
CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
TN M	32	14	9	4	2	2	2	2			2	1	13	7
TN W	154	25	64	29	4	2	2	2	2		17	8	85	39
TEX N	106	95	57	30	15	10	15	10			18	5	90	45
TEX E	37	12	31	7	10	2	9	2	1		2		43	9
TEX S	1,032	551	467	320	57	30	37	23	20	7	94	40	618	390
TEX W	361	236	227	160	54	31	48	27	6	4	27	12	308	203
UTAH	46	26	15	10	9	7	6	4	3	3	4	3	28	20
VERMO	25	13	15	6	1		1				2	1	18	7
VA E	267	211	217	136	41	32	35	28	6	4	32	18	290	186
VA W	19	10	61	15	3	1	5	1	3		1		70	19
WA E	125	42	3	1	6	3	6	3			4	1	13	5
WA W	106	47	61	32	14	8	12	7	2	1	11	5	86	45
WVA N	65	63	45	27	2	2	1	1	1	1	1	1	48	30
WVA S	136	71	81	48	5	4	5	4			9	5	95	57
WI E	49	24	18	8	4	1	2		2	1	3	1	25	10
WI W	37	21	17	11	1	1	1	1			2	2	20	14
WYOMI	27	14	18	5	1	1	1	1			1	1	20	7
GUAM	5	5	4	4									4	4
VIRGI	8	7									1	1	1	1
FL M	305	148	170	104	32	16	33	16	5		19	12	227	132
LA MI	3	2												
CA E	136	51	55	20	13	7	10	5	3	2	5	2	73	29
CA S	371	192	185	96	16	9	16	9			49	40	250	145
FINAL	10,677	5,363	5,732	2,963	1,224	595	1,033	521	191	74	1,052	523	8,008	4,101

16,343 RECORDS TOTALED

FY90 YEAR TO DATE AS OF 05/31/90 CASELOAD STATISTICS
OF CONTROLLED SUBSTANCES

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
AL NORTH	122	53	119	42	53	15	96	34	61	21	75	36
AL MIDDLE	63	33	17	12	9	9	43	18	30	16	22	9
AL SOUTH	66	35	70	25	14	7	101	28	125	52	36	12
ALASKA	42	35	15	10	2	2	38	30	22	18	25	20
ARIZONA	409	276	270	151	75	44	337	194	487	263	299	180
AR EASTERN	56	65	40	36	22	15	35	25	35	24	36	17
AR WESTERN	13	8	13	10	6	6	4	2	5	3	12	6
CA NORTH	243	124	230	194	54	39	205	96	474	182	124	68
CA CENTRAL	411	252	327	200	122	101	247	123	501	247	164	71
COLORADO	137	71	63	39	31	20	97	52	156	72	16	12
CONNECTICUT	63	36	139	53	20	15	32	17	42	19	2	2
DELAWARE	26	19	10	2	11	6	21	15	20	15	28	19
DC	113	71	515	502			113	71	445	332	115	60
FL NORTH	256	96	233	64	52	18	110	60	178	82	126	79
FL SOUTH	1,032	582	593	340	294	220	753	330	2,046	938	596	266
GA NORTH	177	95	155	68	21	16	117	53	276	117	69	31
GA MIDDLE	44	16	44	36	5	6	33	7	55	16	25	10
GA SOUTH	82	45	55	35	12	2	41	27	67	38	73	27
HAWAII	47	39	97	55	5	4	36	25	188	103	9	8
IDAHO	20	12	20	13	4	4	17	3	22	8	1	1
IL NORTH	313	179	753	567	62	47	218	68	691	345	57	32
IL SOUTH	72	44	93	49	10	5	31	15	96	30	36	23
IL CENTRAL	155	119	170	125	21	10	42	28	53	38	50	25
IN NORTH	106	60	55	34	31	17	86	43	107	51	32	20
IN SOUTH	97	35	86	47	20	11	57	16	63	30	42	12
IOWA NORTH	79	62	91	55	2	7	35	20	52	26	38	29
IOWA SOUTH	5	4	26	13			2	2	16	5	7	6
KANSAS	53	23	45	36	11	8	41	18	71	43	16	10
KY EASTERN	90	47	56	14	32	9	82	44	71	40	56	30
KY WESTERN	116	52	113	50	20	6	62	30	162	56	96	30
LA EASTERN	201	115	129	59	33	25	148	73	203	112	93	43
LA WESTERN	51	22	144	29	27	19	23	9	52	20	33	7
MAINE	115	85	124	123	94	63	54	37	131	83	62	50
MARYLAND	225	105	147	37	152	74	137	62	208	101	226	87

7/18/84 FY83 YEAR TO DATE AS OF 05/31/83 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE 1

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
MA	106	37	227	38	95	33	66	24	148	61	32	27
MI EASTERN	243	171	533	366	76	56	265	83	503	175	156	56
MI WESTERN	63	46	88	34	14	12	68	28	75	29	28	18
MINNESOTA	170	51	103	65	44	23	125	60	135	65	231	103
MS NORTH	13	8	22	12	2	2	18	8	30	18	18	7
MS SOUTH	74	43	65	29	8	4	49	26	66	37	62	29
MO EASTERN	112	86	140	95	35	24	73	45	100	57	67	37
MO WESTERN	141	76	67	45	22	12	135	72	191	109	101	58
MONTANA	68	37	18	11	6	3	74	33	78	34	32	15
NEBRASKA	50	30	54	30	8	7	23	14	46	22	47	26
NEVADA	78	63	67	36	12	10	33	26	216	86	40	14
NH	13	5	32	19	5	1	6	3	3	3	18	9
NEW JERSEY	137	83	261	100	27	21	121	33	466	123	33	8
NEW MEXICO	236	133	93	69	26	13	203	112	267	143	97	32
NY NORTH	96	63	133	60	29	19	30	16	93	38	42	7
NY EASTERN	656	465	1,126	641	212	136	498	230	996	652	287	144
NY SOUTH	567	220	1,143	630	113	56	422	175	848	421	326	156
NY WESTERN	75	53	93	57	28	17	44	30	61	46	62	32
NC EASTERN	91	52	37	25	13	4	91	37	140	60	62	22
NC MIDDLE	78	46	26	16	6	3	67	37	79	36	68	24
NC WESTERN	162	28	43	6	3	2	60	27	96	41	106	36
NORTH DAKOT	33	13	20	16	7	5	22	16	17	13	22	12
OH NORTH	144	83	267	156	56	31	67	36	112	48	45	36
OH SOUTH	263	146	177	55	40	17	130	106	122	81	139	72
OK NORTH	53	13	6	2	2	2	69	12	146	61	21	10
OK EASTERN	7	7	9	6	4	2	3	3	6	6	23	8
OK WESTERN	95	56	133	65	31	16	65	40	76	36	64	43
OREGON	267	123	129	73	61	36	150	63	196	82	97	67
PA EASTERN	411	162	326	229	77	65	131	66	258	142	153	56
PA MIDDLE	67	45	115	116	15	12	26	22	51	40	40	29
PA WESTERN	129	62	213	123	38	22	78	27	102	38	31	26
PUERTO RICO	261	123	62	41	51	26	193	93	140	72	120	[illegible]
RHODE ISLAND	32	22	[illegible]	1	4	7	25	19	32	23	33	18
SOUTH CAROL	117	63	111	44	72	21	51	27	102	69	36	20

7/16/80

FY80 YEAR TO DATE AS OF 05/31/80 CASELOAD STATISTICS
OF CONTROLLED SUBSTANCES

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
SOUTH DAKOT	65	52	23	13	7	7	72	41	61	36	30	19
TN EASTERN	63	48	53	43	10	9	28	19	35	21	49	14
TN MIDDLE	43	26	39	25	2	2	32	18	33	21	13	7
TN WESTERN	205	109	160	56	2	1	156	69	183	115	85	39
TEXAS NORTH	268	150	162	133	47	26	186	95	313	130	90	43
TEXAS EAST	66	34	55	40	12	5	37	12	64	20	43	9
TEXAS SOUTH	1,062	622	458	270	86	59	1,032	351	1,027	321	618	390
TEXAS WEST	440	325	226	206	35	20	361	236	432	266	308	203
UTAH	119	59	73	35	7	5	48	26	46	26	28	20
VERMONT	27	17	16	11	5	5	25	13	30	19	18	7
VA EASTERN	261	127	152	45	111	81	257	211	121	69	290	186
VA WESTERN	26	16	56	21	17	3	19	10	69	18	70	19
WA EASTERN	133	50	26	12	6	1	125	42	177	71	13	5
WA WESTERN	276	191	260	179	36	28	106	47	136	61	86	43
WVA NORTH	107	91	138	92	5	3	95	83	92	78	48	38
WVA SOUTH	276	147	466	411	269	169	136	71	113	68	95	57
WI EASTERN	62	25	122	56	6	3	69	26	106	49	25	10
WI WESTERN	61	22	63	26	15	7	37	21	60	36	20	16
WYOMING	39	15	21	9	7	1	27	16	20	12	28	7
GUAM	5	5	1	1			5	5	3	3	4	4
VIRGIN ISLA	9	3	6	6			8	7	29	26	1	1
FL MIDDLE	479	220	402	121	179	83	305	148	511	259	227	132
LA MIDDLE	13	5	13	9	5	2	3	2	6	3		
GA EAST	163	61	67	42	35	26	106	51	232	97	73	29
GA SOUTH	496	455	659	362	326	191	371	192	926	371	250	145
FINAL TOTALS	15,462	6,021	15,336	9,156	3,122	2,419	10,679	5,368	18,021	8,724	8,088	6,101

466,937 RECORDS TOTALED

7/18/86

FY67 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVED COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF. COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
AL NORTH	157	75	135	37	46	19	117	61	42	24	97	49
AL MIDDLE	35	24	6	5	10	6	31	21	10	6	34	27
AL SOUTH	113	47	95	26	43	11	72	34	53	33	99	38
ALASKA	50	31	12	7	8	8	35	21	9	8	34	20
ARIZONA	557	332	251	111	65	44	455	255	489	278	333	158
AR EASTERN	110	72	41	33	40	35	70	42	33	13	68	45
AR WESTERN	25	16	10	9	17	10	14	8	16	7	7	4
CA NORTH	74	35	174	92	99	64	92	44	215	91	266	120
CA CENTRAL	590	269	273	170	232	158	377	152	409	191	333	165
COLORADO	127	72	75	47	40	39	74	36	68	30	82	62
CONNECTICUT	66	36	132	70	14	12	24	15	3	2	85	67
DELAWARE	64	53	13	10	19	12	77	45	31	21	61	34
DC	283	154	616	492	1	1	283	154	467	320	145	81
FL NORTH	293	142	265	57	75	33	178	101	302	147	129	58
FL SOUTH	1,747	850	513	335	448	311	1,196	526	1,952	903	1,229	493
GA NORTH	281	132	143	72	36	23	202	90	196	85	226	79
GA MIDDLE	25	19	43	31	5	7	13	10	30	18	12	10
GA SOUTH	201	69	62	26	75	17	168	53	103	41	97	37
HAWAII	92	65	91	51	17	13	72	38	150	65	33	31
IDAHO	35	17	12	5	13	5	17	13	6	6	23	17
IL NORTH	602	235	657	445	160	132	250	101	530	291	207	84
IL SOUTH	80	51	57	29	25	12	60	33	66	36	41	21
IL CENTRAL	117	69	75	43	26	19	77	45	57	32	66	40
IN NORTH	109	74	125	34	45	23	79	52	50	27	112	44
IN SOUTH	105	55	65	32	27	16	59	28	48	26	69	25
IOWA NORTH	86	65	[illegible]	43	10	9	52	36	43	32	59	41
IOWA SOUTH	40	19	23	19	15	3	24	13	13	4	23	18
KANSAS	117	27	[illegible]	36	40	32	62	38	44	35	101	63
KY EASTERN	72	35	60	27	42	12	56	30	37	24	60	36
KY WESTERN	129	83	52	34	59	30	116	57	195	54	98	49
LA EASTERN	235	119	142	74	61	25	170	83	155	86	207	83
LA WESTERN	26	19	141	44	17	10	31	10	6	6	53	17
MAINE	291	263	149	127	24	71	99	78	155	92	109	58
MARYLAND	459	17[illegible]	[illegible]1	11[illegible]	165	73	314	136	331	133	242	132

FY84 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
MA	182	68	250	64	52	45	159	56	147	70	223	59
MI EASTERN	459	283	457	314	164	105	374	133	375	139	389	137
MI WESTERN	65	43	60	20	26	14	36	21	33	21	96	45
MINNESOTA	221	119	191	98	23	17	127	74	127	74	57	40
MS NORTH	40	22	19	13	14	9	29	13	27	15	22	11
MS SOUTH	106	53	50	25	16	9	78	39	59	37	113	67
MO EASTERN	257	149	122	74	103	62	150	74	92	69	125	69
MO WESTERN	194	127	77	50	70	43	178	114	155	97	149	107
MONTANA	61	37	26	23	1	1	58	31	61	32	33	19
NEBRASKA	81	39	44	30	5	6	50	17	71	32	65	17
NEVADA	144	55	45	34	24	17	117	34	196	74	88	33
NH	36	16	33	18	12	7	7	6	12	8	12	3
NEW JERSEY	162	90	206	133	39	36	99	40	435	101	101	22
NEW MEXICO	267	142	53	44	36	21	193	103	163	85	139	69
NY NORTH	115	45	146	36	22	9	59	16	70	24	50	17
NY EASTERN	993	575	930	590	271	145	589	314	776	372	532	263
NY SOUTH	1,093	534	1,095	634	195	62	797	426	744	395	690	356
NY WESTERN	103	65	53	50	43	20	53	36	79	46	67	32
NC EASTERN	122	53	41	12	1	1	95	52	116	49	144	46
NC MIDDLE	134	39	69	15	12	6	106	26	36	19	96	22
NC WESTERN	142	47	6	3	1		151	58	130	44	88	44
NORTH DAKOT	37	23	30	15	16	15	23	12	17	11	22	15
OH NORTH	199	105	271	169	24	45	90	49	110	69	62	38
OH SOUTH	205	65	105	44	43	13	125	67	114	58	83	37
OK NORTH	73	25	8	5	8	6	69	27	91	31	86	38
OK EASTERN	41	13	11	7	5	6	32	13	24	9	19	10
OK WESTERN	125	66	235	113	46	7	83	46	48	26	86	39
OREGON	232	127	194	75	65	50	153	77	101	50	166	97
PA EASTERN	353	227	249	201	53	55	331	144	359	168	181	113
PA MIDDLE	75	53	[illegible]	117	27	22	14	8	44	24	50	28
PA WESTERN	160	69	[illegible]	43	63	43	130	47	83	40	127	58
PUERTO RICO	197	93	55	34	22	15	171	68	81	45	164	6
RHODE ISLAN	[illegible]	33	[illegible]	6	4	1	52	29	34	22	43	22
SOUTH CAROL	94	27	[illegible]	42	54	19	45	30	77	36	48	29

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
SOUTH DAKOT	67	39	15	11			47	36	22	16	40	29
TN EASTERN	103	65	27	22	6	5	83	46	37	17	88	53
TN MIDDLE	33	22	32	27	9	5	18	9	15	9	35	13
TN WESTERN	126	59	53	16	9	7	125	55	115	65	115	69
TEXAS NORTH	319	157	145	72	116	49	255	108	178	88	292	101
TEXAS EAST	73	26	36	23	13	9	89	26	71	15	29	18
TEXAS SOUTH	1,393	921	471	276	139	97	1,252	827	605	356	1,116	700
TEXAS WEST	543	362	232	163	75	49	483	286	386	220	324	172
UTAH	71	39	10	8	38	9	91	46	27	22	96	44
VERMONT	58	33	30	25	15	14	40	19	37	23	32	17
VA EASTERN	474	316	221	139	62	43	430	268	195	112	320	199
VA WESTERN	63	16	75	15	13	7	77	16	36	10	121	22
WA EASTERN	70	34	4	6	9	5	71	38	65	34	126	48
WA WESTERN	155	125	100	65	62	39	137	66	112	53	103	61
WVA NORTH	67	63	103	29	9	6	84	61	49	28	80	66
WVA SOUTH	661	567	513	447	196	160	169	107	66	52	173	89
WI EASTERN	105	47	119	65	9	8	56	21	69	33	41	17
WI WESTERN	73	51	32	22	6	6	57	40	43	29	21	17
WYOMING	53	18	23	7	13	10	32	13	8	4	36	16
GUAM			1	1							2	1
VIRGIN ISLA	16	12	4	2			16	12	17	15	22	15
FL MIDDLE	832	453	391	151	242	124	528	302	442	250	384	202
LA MIDDLE	9	8	13	10	5	5	4	3	2	2	11	5
CA EAST	161	20	73	42	41	22	125	51	205	77	133	49
CA SOUTH	1,354	962	390	235	465	422	569	342	794	316	509	274
FINAL TOTALS	20,999	12,016	13,961	2,696	5,313	3,298	14,741	7,543	15,013	7,403	13,568	6,543

47,855 RECORDS TOTALED

FY87 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
AL N	117	61	86	45	2	2	3	2			8	2	97	49
AL M	31	21	25	19	7	7	4	4	3	3	2	1	34	27
AL S	72	34	68	24	19	11	15	10	1	1	15	3	99	38
ALASK	35	21	25	12	6	5	6	5			5	3	36	20
ARIZO	455	255	255	128	51	17	44	15	7	2	27	13	333	158
AR E	70	42	55	38	6	5	5	5	1		7	2	68	45
AR W	14	2	5	4	1				1		1		7	4
CA N	92	44	209	96	20	12	17	12	3		37	12	266	120
CA C	377	152	227	103	66	29	58	28	8	1	40	13	333	145
COLOR	74	36	65	35	12	5	11	5	1		5	2	82	42
CONNE	64	15	46	27	14	7	10	5	4	2	25	13	85	47
DELAW	77	45	33	25	15	4	10	2	5	2	13	5	61	34
DC	263	154	95	58	22	11	17	9	5	2	28	12	145	81
FL N	176	101	80	39	31	16	25	15	6	1	18	3	129	58
FL S	1,196	526	586	248	533	204	493	193	40	11	110	43	1,229	495
GA N	202	92	151	57	63	15	58	12	5	3	12	7	226	79
GA M	13	10	9	8							3	2	12	10
GA S	165	53	59	26	21	8	18	7	3	1	17	3	97	37
HAWAI	72	38	42	25	6	3	6	3			5	3	53	31
IDAHO	17	13	14	9	9	5	9	8					23	17
IL N	250	101	124	44	74	16	70	18	4		9	2	207	64
IL S	60	33	29	19	10	2	7	2	3		2		41	21
IL C	77	45	45	26	7	7	7	7			14	7	66	40
IN N	79	52	61	25	20	10	17	10	3		31	9	112	44
IN S	59	28	36	20	4	2	3	1	1	1	8	3	48	25
N IOW	52	36	51	35	7	5	6	4	1	1	1	1	59	41
S IOW	24	13	15	10	8	7	6	5	2	2	2	1	25	18
KANSA	62	38	70	43	11	6	11	6			20	14	101	63
KY E	56	32	45	28	11	4	6	4	5		4	2	60	34
KY W	116	57	74	35	15	9	13	9	2		9	5	98	49
LA E	170	63	164	62	35	14	25	13	5	1	13	7	207	83
LA W	31	16	25	12	5	2	3	2	2		23	3	53	17
MAINE	99	78	91	55	12	1	9	1	3		6	2	109	58
MARYL	314	136	212	103	33	13	31	13	2		37	16	282	132
MA	159	58	143	47	15	7	12	7			7	5	223	59

7/16/80

FY77 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
MI E	374	133	249	101	44	17	39	15	5	2	56	19	369	137
MI W	36	21	64	33	19	7	14	7	5		13	5	96	45
MINNE	127	74	49	34	5	3	4	3	1		3	3	57	40
MS N	29	13	10	6	4	3	4	3			8	2	22	11
MS S	78	39	74	32	12	8	11	8	1		27	7	113	47
MO E	150	74	76	41	35	23	31	20	4	3	14	5	125	69
MO W	178	114	126	94	17	11	14	10	3	1	6	2	149	107
MONTA	36	31	23	14	4	4	4	4			6	1	33	19
NEBRA	50	17	58	14	3	2	2	2	1		4	1	65	17
NEVAD	117	34	49	20	9	4	7	4	2		30	9	88	33
NH	7	4	6	2	6	1	5	1	1				12	3
NEW J	99	40	81	20	16	2	15	2	1		4		101	22
NEW M	143	103	100	52	15	9	15	9			24	8	139	69
NY N	59	14	46	15	1				1		3	2	50	17
NY E	569	314	421	216	86	34	79	33	7	1	25	11	532	263
NY S	797	424	542	292	85	32	65	28	20	4	63	32	690	356
NY W	53	36	46	24	9	4	8	4	1		12	4	67	32
NC E	95	52	98	34	19	5	15	5	4		27	7	144	46
NC M	104	24	74	15	12	3	11	3	1		10	4	96	22
NC W	151	53	64	28	9	6	7	5	2	1	15	10	88	44
N DAK	23	12	18	12							4	3	22	15
OH N	90	49	54	35	4	2	4	2			4	1	62	38
OH S	125	67	71	30	4	2	4	2			8	5	83	37
OK N	69	27	64	26	17	8	16	8	1		5	4	86	38
OK E	32	13	12	7	2	2	2	2			5	1	19	10
OK W	83	46	75	30	7	5	7	5			4	4	86	39
OREGO	153	77	122	68	19	17	18	16	1	1	25	12	166	97
PA E	331	144	123	82	49	26	40	23	9	3	9	5	181	113
PA M	14	[illegible]	36	22	10	5	8	5	2		4	1	50	28
PA W	100	47	97	51	26	5	21	5	5		4	2	127	58
PUERT	171	83	109	40	41	15	35	14	6	2	14	6	164	60
RHODE	53	26	27	12	17	10	16	9	3	1	1		45	22
S CAR	45	30	28	20	13	4	12	4	1		7	5	48	29
S DAK	47	36	31	23	5	4	5	4			4	2	40	29
TN E	83	46	72	[illegible]	8	5	8	5			10	8	88	53

[illegible] CONTROLLED SUBSTANCES PAGE

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
TN M	13	9	31	12							4	1	35	13
TN W	125	55	98	42	12	4	6	4	2		9	3	115	49
TEX N	255	106	214	99	26	10	25	9	1	1	52	22	292	131
TEX E	69	24	29	18									29	18
TEX S	1,252	627	912	610	99	44	91	38	8	6	115	46	1,116	700
TEX W	463	286	232	129	64	33	57	26	7	2	25	13	324	172
UTAH	91	46	69	36	15	3	14	3	1		12	5	96	44
VERMO	46	11	24	12	2	2	2	2			6	3	32	17
VA E	430	268	240	136	37	34	37	34			43	29	320	199
VA W	77	14	87	15	25	8	23	8	2		9	1	121	22
WA E	71	38	72	28	8	8	8	8			46	14	126	68
WA W	137	86	81	51	22	10	18	10	4				103	61
WVA N	96	41	73	59	9	5	9	5			1		80	64
WVA S	169	107	149	74	8	6	6	5	2	1	16	9	173	89
WI E	54	21	24	10	13	5	13	5			4	2	41	17
WI W	37	40	21	17									21	17
WYOMI	32	13	30	14							6	2	36	16
GUAM			2	1									2	1
VIRGI	14	12	9	7	7	5	5	4	2	1	6	3	22	15
FL M	523	332	241	162	80	35	70	32	10	3	43	5	384	202
LA MI	4	3	5	2	5	2	4	2	1		1	1	11	5
CA C	125	51	89	21	35	18	25	17	10	1	29	10	153	49
CA S	669	342	337	215	46	29	37	23	9	6	76	30	309	274
FINAL	14,741	7,543	9,738	4,912	2,302	1,024	2,029	950	273	74	1,528	607	13,568	6,543

21,413 RECORDS TOTALED

7/18/80

FY80 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

CRIMINAL CASE DISPOSITION COUNTS

PAGE

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
AL N	114	72	88	54	19	12	17	12	2		18	7	125	73
AL M	49	39	19	17	4	3	2	1	2	2	11	7	34	27
AL S	111	38	92	45	19	13	17	8	2	2	14	3	125	60
ALASK	10	8	9	9							4	3	13	12
ARIZO	205	126	180	85	30	12	24	11	8	1	79	44	289	141
AR E	72	35	40	21	6	4	5	4	1		8	2	34	27
AR W	12	6	9	5	5	4	5	4			2	2	16	11
CA N	263	117	53	37	4	2	4	2			30	11	87	50
CA C	337	151	154	76	49	29	45	28	4	1	30	9	233	114
COLOR	45	29	19	15	1	1	1	1			3	1	23	17
CONNE	125	55	107	45	14	3	13	3	1		23	2	144	50
DELAW	26	17	13	7	1	1	1	1			9	3	23	13
DC	175	115	123	60	15	9	13	9	2		10	5	148	94
FL N	212	65	157	45	33	21	30	19	3	2	19	6	209	72
FL S	1,147	517	479	232	211	93	197	88	14	5	32	15	722	340
GA N	162	67	69	42	22	12	22	12			22	14	113	68
GA M	46	16	14	4	13	5	13	5			3		30	13
GA S	104	54	57	26	13	6	8	5	2	1	12	4	79	38
HAWAI	139	86	45	34	4	4	3	3	1	1	28	23	77	61
IDAHO	3	4	2	1	3	3	3	3			1		6	4
IL N	327	56	109	33	52	22	51	22	1		31	11	192	66
IL S	62	34	52	22	8	3	5	3			4	1	64	27
IL C	63	46	42	22	15	8	14	8	1		5	2	62	32
IN N	57	23	36	19	5	1	4	1	1		5	2	48	22
IN S	87	40	67	29	2	2	2	2			9	5	78	36
N IOW	40	30	19	14	6	6	5	5	1	1	5	5	30	25
S IOW	24	15	11	9	2	5	2	5			2	1	21	14
KANSA	100	75	39	32	7	3	5	3	2		12	6	58	41
KY E	62	35	20	13	3	3	3	3			5	2	28	18
KY W	156	47	27	11	5	6	5	4	3	2	5	3	40	27
LA E	164	58	95	35	11	2	3	2	8		5	1	114	38
LA W	12	8	7	1							2	1	9	2
MAINE	159	82	132	32	21	12	17	10	4	4	26	6	152	48
MARYL	337	149	223	55	33	16	45	13	9	3	38	6	316	107
MA	159	31	133	[illegible]	19	11	16	10	1	1	20	15	159	86

FY82 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES
CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
MI E	364	113	163	59	13	5	17	5	1		29	5	230	72
MI W	81	36	16	7	2	2	1	1	1	1	7	7	25	16
MINNE	175	65	106	42	4	3	3	3	1		5	1	115	46
MS N	25	19	11	9	5	2	3	2	2		1		17	11
MS S	113	42	41	17	5	1	4	1	1		21	8	67	26
MO E	165	96	96	44	37	19	33	15	4	1	11	3	142	66
MO W	95	70	3	2							1	1	9	9
MONTA	32	22	19	13	6	4	5	3	1	1	3	1	28	18
NEBRA	150	45	84	25	1		1				4	1	89	26
NEVAD	50	21	14	6	5	1	5	1			7	3	26	10
NH	21	9	13	4	3	1	2	1	1				16	5
NEW J	365	83	108	28	22	6	19	6	3		2	2	132	36
NEW M	114	52	85	43	15	10	15	9	1	1	12	4	113	57
NY N	54	20	58	13	6	2	4	2	2		6	3	70	18
NY E	499	307	221	153	31	25	29	23	2	2	14	5	266	183
NY S	526	261	196	121	63	29	55	27	8	2	32	18	291	168
NY W	79	35	102	50	11	6	9	4	2	2	15	10	128	66
NC E	190	43	75	27	19	4	16	4	3		25	5	119	36
NC M	56	28	55	20	10	5	10	5			2	2	67	27
NC W	53	25	39	15	10	3	7	2	3	1	4	3	53	21
N DAK	8	5	9	3							2		11	3
OH N	60	45	74	34							8	2	82	36
OH S	167	56	105	54	21	8	17	7	4	1	9	5	135	67
OK N	61	26	17	11	5	1	5	1	1		2		25	12
OK E	16	6	10	3	5	2	5	2			13	1	28	6
OK W	105	26	68	7	11		9		2		8	3	87	10
OREGO	168	74	57	32	26	10	24	9	2	1	13	6	96	48
PA E	150	72	47	30	9	5	7	4	1	1	3	3	58	38
PA M	57	35	44	38	2	2	2	2			2	2	48	42
PA W	169	65	72	53	22	8	25	8	3		5	6	105	67
PUERT	97	56	57	31	36	15	25	14	11	4	7	2	100	51
RHODE	37	13	19	10	7	2	7	2			2	2	28	14
S CAR	75	37	88	48	46	6	35	6	11		17	6	151	60
S DAK	8	6	4	3							4	3	8	6
TN E	61	36	25	13							10	7	35	20

FY86 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
TN M	43	19	41	31	6	3	6	3			2	1	49	35
TN W	99	44	63	28	7	4	6	3	1	1	4	3	74	35
TEX N	326	126	164	73	23	13	21	13	2		32	12	219	98
TEX E	14	9	14	10							2	2	16	12
TEX S	695	369	412	260	53	32	51	31	7	1	59	17	529	309
TEX W	371	211	266	152	56	34	50	33	4	1	44	35	364	221
UTAH	29	14	25	4	4	2	4	2			1		30	6
VERMO	30	19	25	11	3	2	2	2	1				28	13
VA E	137	92	85	63	19	14	17	13	2	1	23	15	127	92
VA W	74	15	25	8	13	5	13	5			8	3	46	16
WA E	107	27	17	16	4	4	3	3	1	1	5	4	26	24
WA W	80	47	34	23	8	3	8	3			7	3	49	29
WVA N	53	40	36	32	3	1	3	1			3	2	42	35
WVA S	159	72	88	46	7	4	7	4			14	6	109	56
WI E	57	29	30	15	10	5	9	5	1		4	4	44	24
WI W	12	10	7	5	1	1	1	1					8	6
WYOMI	27	9	31	8	4	1	4	1			1	1	36	10
GUAM	3	3	4	4	1		1				1		6	4
VIRGI	19	12	6	3	7	2	6	2	1		8	4	21	9
FL M	497	266	319	155	165	94	146	89	19	5	37	11	521	260
LA MI	17	9	13	9	2	2	2	2			4	2	19	13
CA E	173	45	48	25	5	3	4	3	1		13	10	66	38
CA S	409	252	388	182	30	23	26	20	4	3	68	28	486	233
FINAL	13,269	5,156	7,071	3,527	1,527	779	1,401	724	166	55	1,178	519	9,836	4,825

17,492 RECORDS TOTALED

7/18/86 FY86 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
AL NORTH	159	92	106	62	56	23	116	73	32	18	125	73
AL MIDDLE	66	59	13	13	24	22	48	39	18	15	34	27
AL SOUTH	136	46	53	24	21	11	111	38	82	37	125	60
ALASKA	13	11	7	5	7	7	10	5	11	9	13	12
ARIZONA	409	178	159	76	69	61	265	126	338	175	289	141
AR EASTERN	98	58	35	31	25	13	72	35	31	17	34	27
AR WESTERN	22	16	13	11	12	7	12	8	6	3	16	11
CA NORTH	437	228	322	149	106	64	263	117	421	177	87	30
CA CENTRAL	559	323	255	141	166	138	337	151	398	224	233	116
COLORADO	72	45	155	71	14	12	45	29	39	27	23	17
CONNECTICUT	105	75	73	44	26	15	125	55	195	48	144	30
DELAWARE	46	24	20	12	13	9	28	17	9	6	23	13
DC	250	166	617	494	27	15	175	115	309	246	148	94
FL NORTH	299	136	219	77	95	57	212	85	260	107	209	72
FL SOUTH	1,595	844	562	305	339	256	1,147	517	2,097	928	722	340
GA NORTH	245	128	134	55	59	29	162	87	163	67	113	68
GA MIDDLE	42	22	39	23	14	11	46	16	55	23	30	13
GA SOUTH	185	63	106	40	22	12	104	54	62	29	79	38
HAWAII	137	127	47	42	17	16	139	86	139	82	77	61
IDAHO	11	7	7	7	2	1	8	4	12	7	6	4
IL NORTH	419	224	944	415	167	69	327	88	488	251	192	66
IL SOUTH	113	35	65	22	32	22	62	34	68	27	64	27
IL CENTRAL	95	53	55	35	15	9	80	40	41	27	62	32
IN NORTH	93	44	65	32	19	11	57	23	73	17	48	22
IN SOUTH	117	36	45	24	34	25	87	40	37	23	78	36
IOWA NORTH	84	33	62	17			46	30	50	37	30	25
IOWA SOUTH	36	26	15	15	13	4	24	15	14	8	21	14
KANSAS	111	41	49	12	19	13	100	75	85	60	58	41
KY EASTERN	114	51	52	19	4	4	62	35	44	26	28	18
KY WESTERN	226	22	111	34	12	9	158	47	206	49	43	27
LA EASTERN	199	82	143	72	42	23	164	58	171	72	116	38
LA WESTERN	48	11	122	47	26	9	12	6	66	25	9	4
MAINE	245	147	58	43	33	39	139	82	174	77	152	48
MARYLAND	547	223	[illegible]	124	133	43	327	149	322	123	316	107

FY86 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVED COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
MA	301	140	345	129	40	28	189	81	301	110	159	86
MI EASTERN	437	263	444	277	122	67	364	113	384	143	230	72
MI WESTERN	92	46	32	21	4	4	81	34	73	36	25	16
MINNESOTA	206	102	154	53	30	17	175	85	135	81	115	46
MS NORTH	34	25	12	13	4	4	25	19	20	13	17	11
MS SOUTH	146	55	31	15	25	17	113	40	98	42	67	26
MO EASTERN	252	149	144	63	98	56	135	96	82	49	142	66
MO WESTERN	176	106	159	37	13	12	95	70	102	74	9	9
MONTANA	38	27	9	9	1	1	32	20	18	10	28	18
NEBRASKA	143	57	33	19	5	3	150	45	80	28	89	26
NEVADA	59	31	55	29	9	5	50	21	147	67	26	10
NH	36	19	22	17	4	2	21	9	18	8	16	5
NEW JERSEY	347	105	153	105	34	26	365	63	489	88	132	36
NEW MEXICO	158	72	71	59	28	15	114	52	100	48	113	57
NY NORTH	58	29	75	32	9	5	38	20	58	26	70	18
NY EASTERN	839	525	773	306	244	161	499	307	761	389	266	183
NY SOUTH	799	440	922	432	116	49	526	261	802	475	291	168
NY WESTERN	96	61	71	40	75	37	79	35	100	48	128	66
NC EASTERN	196	47	15	7	2	1	190	43	165	36	119	36
NC MIDDLE	56	26	13	6	14	8	54	26	30	19	67	27
NC WESTERN	53	25	5	3	5	4	53	25	48	19	53	21
NORTH DAKOT	20	14	24	23	5	2	8	5	16	14	11	3
OH NORTH	155	105	248	156	72	40	80	45	82	56	82	36
OH SOUTH	116	62	65	37	60	21	147	54	92	34	135	67
OK NORTH	56	27	11	9			61	26	106	38	25	12
OK EASTERN	19	9	6	5	5	5	14	4	12	7	28	6
OK WESTERN	155	35	125	54	19	3	105	26	72	36	87	10
OREGON	209	124	151	52	44	24	168	74	183	83	96	48
PA EASTERN	266	172	247	193	126	67	130	78	190	115	38	38
PA MIDDLE	102	76	154	32	21	13	57	35	63	32	48	42
PA WESTERN	236	119	133	72	52	33	149	66	111	52	105	47
PUERTO RICO	166	65	54	23	34	25	97	56	73	36	100	51
RHODE ISLAN	46	22	5	5	23	13	37	18	29	17	28	14
SOUTH CAROL	90	52	[illegible]	[illegible]	34	14	72	37	68	30	151	60

7/16/80 FY80 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE 3

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
SOUTH DAKOT	65	20	12	13	7	4	6	6	3	3	8	6
TN EASTERN	70	37	13	8	7	5	61	32	40	22	35	20
TN MIDDLE	47	24	22	17	16	12	40	19	34	16	49	35
TN WESTERN	161	47	52	15	13	7	99	44	121	62	76	35
TEXAS NORTH	371	152	149	96	58	29	326	126	211	82	219	98
TEXAS EAST	36	23	35	25	13	12	16	9	7	5	16	12
TEXAS SOUTH	730	423	397	192	52	25	695	369	520	313	529	309
TEXAS WEST	436	266	171	95	56	36	371	211	260	159	366	221
UTAH	97	29	66	15	8	4	29	16	28	17	30	6
VERMONT	48	32	39	29	13	9	30	19	36	23	28	13
VA EASTERN	224	139	139	102	48	23	137	98	89	54	127	92
VA WESTERN	93	17	39	17	13	9	74	15	64	18	46	14
WA EASTERN	118	36	13	13	9	5	107	27	116	38	26	24
WA WESTERN	164	98	149	94	69	48	80	47	156	99	49	29
WVA NORTH	83	62	114	101	6	4	50	40	35	23	42	35
WVA SOUTH	236	174	230	168	114	63	159	72	76	38	109	56
WI EASTERN	111	59	74	47	15	11	57	29	52	27	44	26
WI WESTERN	30	23	20	17	4	3	12	10	7	6	8	6
WYOMING	32	14	15	12	7	7	27	9	12	7	36	10
GUAM	8	3	1	1	9	7	3	3	3	2	6	4
VIRGIN ISLA	19	10	10	5			19	10	26	15	21	9
FL MIDDLE	732	407	297	151	207	103	497	266	296	152	521	260
LA MIDDLE	21	12	15	9	2	2	17	9	12	6	19	13
CA EAST	217	78	122	55	36	13	173	49	171	58	66	38
CA SOUTH	550	316	192	78	34	54	489	252	618	251	486	233
FINAL TOTALS	16,263	7,344	11,965	6,555	3,476	2,353	13,269	6,156	14,590	6,953	9,836	4,825

40,627 RECORDS TOTALED

7/18/86 FY85 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
AL N	90	49	49	33	12	5	12	5			9	6	70	44
AL M	36	21	24	17	10	6	9	6	1		4	1	42	24
AL S	79	36	31	9	16	3	13	3	3		1	1	48	13
ALASK	17	17	20	19	1	1	1	1			8	5	29	25
ARIZO	176	105	121	56	13	7	13	7			55	28	186	91
AR E	60	28	41	16	9	9	8	8	1	1	12	3	62	30
AR W	31	17	25	12	4	3	4	3			12	4	41	19
CA N	267	146	82	44	15	11	14	11	1		19	8	116	63
CA C	276	130	133	45	49	22	43	22	6		18	8	203	75
COLOR	37	11	55	13	1	1	1	1			2	1	58	20
CONNE	170	50	63	12	12		7		5		7	1	82	13
DELAW	6	5	8	5	2	2	1	1	1	1	2	2	12	9
DC	291	149	157	117	71	30	60	20	22	10	38	17	277	173
FL M	172	63	60	37	65	15	61	15	6		17	5	144	57
FL S	1,213	551	366	190	275	126	233	110	65	7	65	26	729	333
GA N	240	82	67	35	50	15	66	15	6		9	2	148	52
GA M	54	31	55	30	5	1	5	1			13	6	73	37
GA S	66	35	72	27	23	9	21	3	2		21	9	116	39
HAWAI	121	56	63	52	29	9	26	8	9	1	27	15	125	76
IDAHO	7	5	3	2	1	1	1	1			4	3	8	6
IL N	243	72	68	27	22	10	12	10	6		8	3	94	40
IL S	77	31	51	24	46	11	21	10	3	1	2		77	35
IL C	63	32	42	31	19	9	15	8	3	1	3	1	63	41
IN N	66	15	19	5	8	2	6	1	2	1	5	3	32	10
IN S	67	27	88	22	32	3	26	2	2	1	13	3	118	28
N IOW	41	35	8	5							2	2	10	7
S IOW	53	23	26	12	25	4	18	4	2		6	3	60	28
KANSA	42	25	27	16	9	5	5	5	6	1	8	3	44	25
KY E	16	11	19	16	5	4	5	4			8	4	32	20
KY W	35	22	15	14	12	5	11	4	1	1	10	8	37	27
LA E	119	54	57	32	4	3	4	3			4	3	77	38
LA W	16	4	6	3	1	1	1	1			2	2	9	6
MAINE	58	26	34	11	14	1	12	1	2		4	3	52	14
MARYL	252	14	77	21	21	14	19	13	2	1	9	5	100	50
MA	151	42	95	45	1	1	1	1			4	1	100	51

FY85 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES
CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
MI E	247	43	96	51	19	5	13	5	5		23	2	137	58
MI W	46	30	27	21	5	4	5	4			8	2	40	27
MINNE	316	61	78	47	18	13	16	12	2	1	8	5	104	65
MS N	8	4	1	1	7	1	6	1	1		1		9	2
MS S	33	14	16	5	3	1	1	1	2		4	1	23	7
MO E	164	85	116	72	26	20	23	16	6	2	15	10	160	100
MO W	48	27	18	10	1				1				19	10
MONTA	26	13	10	6	1	1	1	1			9	1	20	8
NEBRA	12	6	4	3									4	3
NEVAD	46	16	12	5	8	5	5	5	1		10	4	28	16
NH	16	4	3	1	5	2	4	2	1				8	3
NEW J	226	46	63	20	2		2						65	20
NEW M	76	45	45	26	13	2	7	2	3		11	2	66	30
NY N	108	23	26	18	17	4	12	2	5	2	20	5	63	27
NY E	302	233	190	136	23	21	27	20	1	1	3	2	221	159
NY S	309	331	194	121	73	33	68	31	5	2	16	9	283	163
NY W	60	42	16	8	1		1				2	1	19	9
NC E	111	32	43	11	12	4	11	4	1		15	4	70	19
NC M	55	23	42	16	11	4	9	4	2		3	2	56	22
NC W	33	17	14	7	2	2	2	2			1	1	17	10
N DAK	26	16	22	15	3	2			3	2	5	3	30	20
OH N	124	75	85	57	14	11	13	10	1	1	5	2	104	70
OH S	100	92	76	38	17	11	17	11			10	5	109	54
OK N	42	19	27	9	3	2	3	2			3		33	11
OK E	27	7	7	2	2	2	2	2			5	3	16	7
OK W	76	17	56	14	8	4	7	6	1		3	3	67	23
OREGO	36	12	17	9	7	1	6	1	1		1	1	25	11
PA E	211	92	118	56	37	16	35	16	2		10	4	165	76
PA M	41	24	25	11	7	4	7	4			15	10	47	25
PA W	121	46	72	23	20	11	23	11			4	1	99	35
PUERT	131	42	74	50	21	8	30	8	3		19	14	126	72
RHODE	19	14	12	10	4	2	2	2	2		2	2	18	14
S CAR	61	22	69	16	13	6	9	6	1		9	3	88	25
S DAK	16	5	14	4							7	2	21	6
TN E	53	17	24	11	9	1	3	1					27	14

7/10/86 → FY85 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE

CRIMINAL CASE DISPOSITION COUNTS

DIST	FILED DEF CNT	FILED CASE CNT	GUILTY PLEAS DEF	GUILTY PLEAS CASE	TRIED DEF CNT	TRIED CASE CNT	GUILTY VERDICT DEF	GUILTY VERDICT CASE	ACQUIT DEF CNT	ACQUIT CASE CNT	OTHER TERM DEF	OTHER TERM CASE	TOTAL TERM DEF	TOTAL TERM CASE
TN M	25	16	19	10	4	2	4	2			10	6	32	18
TN W	66	42	43	25	11	6	10	5	1	1	4	3	58	34
TEX N	170	72	61	30	29	10	29	10			7	5	97	45
TEX E	57	36	37	22							21	15	58	37
TEX S	332	162	117	73	17	8	10	6	7	2	29	12	163	91
TEX W	296	165	219	115	36	24	30	20	6	4	25	16	280	155
UTAH	61	15	11	6	6	4	6	4					17	10
VERMO	25	11	17	8	1		1				2	1	20	9
VA E	131	64	92	39	20	12	19	11	1	1	10	7	122	58
VA W	53	27	23	12	1	1	1	1			10	4	34	17
WA E	50	56	23	23	4	4	4	4			12	12	39	39
WA W	102	56	72	33	4	4	4	4			20	5	96	42
WVA N	59	42	36	30	1	1	1	1			3	2	40	33
WVA S	54	34	51	21	7	5	4	3	3	2	14	2	72	28
WI E	53	29	22	15	4	4	3	3	1	1	7	4	33	23
WI W	10	13	5	4	6	3	5	2	1	1	2	1	13	8
WYOMI	52	17	24	10	11	3	9	3	2		7	1	42	14
GUAM	17	6	13	3							1	1	14	4
VIRGI	13	6	6	4	5	4	4	3	1	1	2	1	13	9
FL M	256	111	142	71	90	26	79	25	11	1	28	15	260	112
LA MI	16	11	12	8	1	1	1	1					13	9
CA E	40	24	140	93	15	9	14	9	1		55	33	210	135
CA S	632	245	257	129	36	21	31	20	5	1	53	30	346	180
FINAL	10,756	5,074	5,365	2,732	1,540	714	1,316	601	224	53	1,025	472	7,930	3,918

16,332 RECORDS TOTALED

7/30/86 FY85 CASELOAD STATISTICS OF CONTROLLED SUBSTANCES PAGE

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
AL NORTH	143	72	115	45	25	11	90	49	43	17	70	44
AL MIDDLE	49	33	16	11	33	21	38	21	2	1	42	24
AL SOUTH	132	54	65	23	3	2	79	36	84	44	48	13
ALASKA	20	20	11	9	7	7	17	17	14	13	29	25
ARIZONA	273	172	113	65	125	69	176	105	360	195	186	91
AR EASTERN	90	46	35	25	25	15	60	28	13	9	62	30
AR WESTERN	58	35	12	10	20	13	31	17	9	5	41	19
CA NORTH	427	247	264	153	70	51	267	140	302	145	116	63
CA CENTRAL	426	231	464	293	34	73	276	130	410	258	205	75
COLORADO	152	45	132	56	20	14	37	11	18	12	58	20
CONNECTICUT	241	89	59	43	36	27	170	50	214	82	82	13
DELAWARE	20	11	17	10	6	5	8	5	6	2	12	9
DC	407	265	565	455	14	9	291	189	281	226	277	173
FL NORTH	246	123	98	46	47	22	172	69	127	55	144	57
FL SOUTH	1,050	865	491	234	321	285	1,213	551	2,035	897	729	333
GA NORTH	224	124	91	52	26	21	226	92	179	74	148	52
GA MIDDLE	68	59	45	37	38	25	59	31	25	15	73	37
GA SOUTH	154	55	61	18	41	13	34	35	18	12	116	39
HAWAII	132	51	51	35	51	40	121	89	66	49	125	76
IDAHO	14	10	5	3	6	4	7	5	10	7	8	6
IL NORTH	306	120	530	354	65	64	243	70	475	240	96	40
IL SOUTH	111	49	67	41	40	15	77	31	50	21	77	35
IL CENTRAL	65	60	57	41	29	22	40	30	19	16	63	41
IN NORTH	37	22	45	22	19	14	64	15	63	15	32	10
IN SOUTH	107	46	52	30	32	16	87	27	28	19	118	28
IOWA NORTH	43	41	10	9	1	1	41	36	34	32	10	7
IOWA SOUTH	46	26	13	4	53	15	53	25	11	7	60	28
KANSAS	67	36	27	24	5	2	43	25	44	26	44	25
KY EASTERN	23	15	13	5	9	7	19	11	9	8	32	20
KY WESTERN	72	37	64	27	15	9	33	22	68	29	37	27
LA EASTERN	173	70	253	74	59	64	119	56	121	67	70	38
LA WESTERN	75	34	126	51	5	5	32	8	63	21	9	6
MAINE	37	27	22	17			56	26	130	40	52	14
MARYLAND	377	195	214	194	74	35	250	32	351	88	103	50

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
MASS	252	137	175	111	35	24	151	80	312	132	130	51
MI EASTERN	325	190	422	240	79	59	227	93	289	112	137	58
MI WESTERN	52	24	22	13	5	6	44	30	17	16	40	27
MINNESOTA	173	100	33	57	21	15	110	61	75	42	104	65
MS NORTH	5	5	7	5	1	1	8	4	12	5	9	2
MS SOUTH	51	23	25	11	9	3	30	14	51	29	25	7
MO EASTERN	205	131	112	64	58	41	162	45	60	26	160	100
MO WESTERN	129	75	104	72	11	7	46	27	37	25	19	10
MONTANA	20	14	4	4	1	1	24	13	14	7	20	8
NEBRASKA	34	15	24	14	1	1	12	6	15	8	4	3
NEVADA	59	20	27	21	12	9	44	19	119	52	28	14
NH	40	16	12	9	9	6	14	4	9	4	8	3
NEW JERSEY	293	113	155	114	34	22	226	48	415	82	65	20
NEW MEXICO	93	62	40	26	27	14	76	45	92	52	66	30
NY NORTH	101	22	68	30	16	15	108	23	93	27	63	27
NY EASTERN	604	369	773	339	177	131	362	209	544	297	221	139
NY SOUTH	706	432	757	356	141	70	569	308	677	418	285	163
NY WESTERN	127	76	137	63	26	18	86	42	117	61	19	9
NC EASTERN	106	35	9	4	7	7	111	32	94	27	70	19
NC MIDDLE	54	23	3	3	9	5	53	23	30	17	54	22
NC WESTERN	67	29	8	4	16	11	53	17	46	15	17	10
NORTH DAKOT	51	36	17	12	19	15	24	16	19	12	30	20
OH NORTH	204	109	214	136	95	67	124	75	84	46	106	70
OH SOUTH	221	117	105	51	35	15	166	90	102	56	109	54
OK NORTH	46	22	5	7	2	2	42	19	50	23	33	11
OK EASTERN	35	14	7	7	3	2	27	7	22	7	14	7
OK WESTERN	127	39	105	40	20	11	70	17	34	21	67	23
OREGON	56	28	61	32	10	2	34	18	129	55	25	11
PA EASTERN	267	176	297	121	90	65	211	93	192	98	165	76
PA MIDDLE	101	69	117	73	13	11	41	28	37	27	47	25
PA WESTERN	133	70	132	59	17	12	121	46	91	42	99	35
PUERTO RICO	122	62	21	14	23	19	101	43	77	32	126	72
RHODE ISLAN	37	20	12	8	5	5	19	12	19	14	15	16
SOUTH CAROL	151	52	93	43	13	8	81	23	157	47	88	25

[illegible]

[illegible] CASELOAD STATISTICS [illegible]

RECEIVED, PENDING, TERMINATED, FILED COUNTS

DIST	MATTER DEF COUNT	MATTER RECEIVE COUNT	MATTER DEF PEND COUNT	MATTER PEND COUNT	MATTER DEF TERM COUNT	MATTER TERM COUNT	CASE FILE DEF COUNT	CASE FILE COUNT	CASE PEND DEF COUNT	CASE PEND COUNT	CASE TERM DEF COUNT	CASE TERM COUNT
SOUTH DAKOT	17	7			3	3	16	5	5	4	21	8
TN EASTERN	44	22	10	8	12	11	35	17	13	8	27	12
TN MIDDLE	65	33	40	27	14	7	29	18	33	22	32	18
TN WESTERN	90	50	34	22	5	5	66	42	58	41	58	34
TEXAS NORTH	276	121	254	121	39	19	170	72	155	67	97	43
TEXAS EAST	56	33	25	23	8	4	57	36	4	4	58	37
TEXAS SOUTH	433	212	535	279	27	16	332	168	368	232	163	91
TEXAS WEST	322	191	127	99	32	27	294	155	316	195	280	155
UTAH	40	19	4	4	7	5	41	15	29	9	17	10
VERMONT	55	26	44	28	10	9	23	11	17	12	20	9
VA EASTERN	209	165	140	56	38	69	131	64	82	51	122	58
VA WESTERN	30	45	33	23	19	14	53	27	36	17	34	17
WA EASTERN	56	39	11	11	4	4	50	30	36	36	39	39
WA WESTERN	164	102	153	46	94	47	102	53	135	87	96	42
WVA NORTH	106	93	74	53	11	9	59	42	26	16	40	33
WVA SOUTH	173	110	203	120	79	28	54	34	21	18	72	28
WI EASTERN	74	44	35	25	10	9	53	29	40	23	33	23
WI WESTERN	13	13	9	9	3	3	10	10	4	4	13	8
WYOMING	67	27	20	15	16	9	52	17	17	7	42	14
GUAM	20	9	5	3	3	2	17	6	7	5	14	4
VIRGIN ISLA	13	6	9	5			13	6	28	14	13	9
FL MIDDLE	430	127	246	115	123	57	256	111	313	141	260	112
LA MIDDLE	22	15	14	9	4	1	16	11	14	7	13	9
CA EAST	128	69	151	53	37	26	60	24	31	20	210	105
CA SOUTH	839	341	211	91	98	71	632	249	568	237	346	180
FINAL TOTALS	15,299	9,213	11,057	6,140	3,290	2,127	10,756	5,074	12,307	5,956	7,930	3,918

34,554 RECORDS TOTALED

Question: I have one question, if I may, one question on an amendment which I added to the budget bill which passed allocating $100 million this year s part of a five-year program to construct 16,000 cells to be dedicated to convicted habitual offenders out of State prisons. . . I would be interested in your judgment as to whether you think it would be a good idea to try to move forward on that line of 16,000 cells on a trial basis to try to get States to use their habitual offender statutes.

Answer: At this time, it is doubtful that funds will be available for the Federal Prison System to fully meet its basic mission - the incarceration of offenders sentenced by Federal courts - let alone take on the added responsibility for substantial numbers of state inmates.

The Federal inmate population which totals 43,000 has increased by over 80 percent since 1981. The U.S. Sentencing Commission has projected that the total Federal inmate population will increase to a range of 78,000 to 1[illegible]5,000 Federal inmates by FY 1997. Federal prisons are seriously overcrowded and, today, operate at an inmate level that is approximately 160 percent of their design capacity.

While the Federal Prison System is now undertaking the largest prison construction program in its history, the budgetary situation will make it extremely difficult to keep pace with projected future increases in the Federal inmate population. In this context, the Federal Prison System is in the same position as most

State correctional systems - overcrowded and underfunded. Consequently, any proposal to transfer State responsibilities to the Federal Government to incarcerate inmates sentenced to prison under State statutes is impractical.

Question from Senator Simon

Question: Let me ask you about an area where I questioned the Attorney General and Brad Reynolds and others, and that is on the employment of minorities within the Justice Department. . . Of the 373 professional attorneys in the Criminal Division, you have eight black males, seven Hispanic males, one Asian male, and four black females. It is not a particularly impressive number.

Answer: At this time, there are 379 attorneys in the Criminal Division. Of these, there are eight black males, seven Hispanic males, eighty-two white females, one Asian female, and four black females.

LDF
NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.

National Office
Suite 1600
99 Hudson Street
New York, N.Y. 10013 (212) 219-1900 Fax: (212) 226-7592

January 10, 1989

Deborah Leavy, Chief Counsel
and Staff Director
Subcommittee on the Constitution
Senate Committee on the Judiciary
524 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Ms. Leavy:

On May 26, 1988, William Bradford Reynolds testified before the Senate Committee on the Judiciary. We have studied the transcript of Mr. Reynolds' remarks with respect to the Georgia school desegregation case and believe that the record needs to be clarified in several respects.

1. Mr. Reynolds asserted in response to Senator Simon's question that the Department of Justice had consulted with black parents in the school districts whose desegregation suits the Department has been seeking to terminate:

> Well, we consulted with the schools, and we gave notice and asked for the black parents to come in and tell us to react to it, tell us what the problems were. . . .
>
> . . . What we did is we did contact the school districts before we move[d] forward on this, and then we also gave notice to the plaintiffs in[] the customary fashion--the Senator said it was not--but in the customary fashion by indicating to them that we thought this was something, this was a court decree that could be removed; but if they had any reason that it shouldn't, they have every ability to come in and advise us what the problems are.

(Tr. 88-89). We do not believe that Mr. Reynolds' testimony is an accurate description of what happened in the Georgia lawsuits.

Attorneys from the NAACP Legal Defense & Educational Fund, Inc., along with local counsel, have represented a statewide class of black pupils as intervenors in the United States & Ridley v. State of Georgia case since 1969. The Department of Justice was well aware of our status. Nevertheless, when the Department decided in 1988 that these suits should be terminated and all injunctive relief vacated, it did not contact counsel for the intervenors. Instead, the Department discussed its plans

Contributions are deductible for U.S. income tax purposes.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had for over 30 years a separate Board, program, staff, office and budget.

5570

only with the defendant school districts and reached agreement with eight individual school systems on a proposed dismissal of the cases.

The first notice which we had of this decision was when we received copies of a February 3, 1988 letter from a Justice Department attorney to the Clerk of the U.S. District Court for the Middle District of Georgia. That letter transmitted Joint Stipulations of Dismissal "signed by the United States and eight school districts" along with a proposed Judgment and Order in each instance. (A copy of the letter is appended as Exhibit "A".)

The letter to the Clerk of the Court did not in any sense follow normal procedures or "customary fashion," as Mr. Reynolds testified. It did not ask the Clerk to file the documents; it was not accompanied by a formal motion; it merely "request[ed] that you assign this matter to the appropriate judge for consideration."

Moreover, the Stipulations and proposed Judgments and Orders served upon counsel for the intervenors on February 3 were noticeably incomplete. Although each document was entitled "Joint Stipulation of Dismissal" and recited that "[t]he parties by and through counsel agree . . . ," each contained a signature line for the plaintiff-intervenors' counsel that was conspicuously blank. And while not explicitly included in the "Joint Stipulation," the accompanying proposed Judgment and Order called for the dissolution of all injunctive relief in each case at the time of dismissal.

Also on February 3, the Department of Justice Attorney wrote to the LDF staff attorney with responsibility for the matter. (A copy of the letter is appended as Exhibit "B".) This letter did not solicit black parents' comments or participation; it merely stated that "[i]f you have any questions about this matter, please call [name of attorney]."

We found these communications puzzling, to say the least. Accordingly, on February 16 LDF counsel wrote to the Clerk of the Court, noting "that no action has been formally requested of the Court concerning these stipulations" and expressing the view that "absent consent of all parties or a motion to the court, we believe that no action is appropriate at this time. (See copy of letter appended as Exhibit "C".)

On the same date we wrote directly to the Department of Justice, protesting the Department's plans and the procedures followed in bringing the matter to court:

> . . . We are particularly surprised and concerned by your submission to the Clerk of the Court of a stipulation proposing dismissal of these actions which has not been executed by counsel for all of the parties. As we note in our letter of this date to Mr. Leonard, the first notice which we had of the United States' intention to seek dismissal of these actions and vacation of the injunctive orders which have been entered herein was when we received your letter and attachments.
>
> We believe that the course of action suggested by the United States is improper and fails to protect the rights of black citizens and schoolchildren on whose behalf the Attorney General originally brought this suit, and whose interests the Ridley intervenors represent in this matter . . . .
>
> . . .
>
> As we indicate in our letter to Mr. Leonard, we are undertaking the necessary process of factual review in order to determine what position the Ridley intervenors should take in this matter. Since we were not previously part of the process of negotiating the stipulations which you have proposed, we hope that out of fairness the United States will make no attempt to pursue dismissal and vacation of outstanding orders in any of these cases until we have had an adequate opportunity to complete our fact-gathering and to meet with you to discuss this approach. . . .

(A copy of this letter is appended as Exhibit "D".)

It was only following these responses to the government's extraordinary tactics that the Department of Justice submitted, on February 23, 1988, formal motions seeking to have the Court approve the Joint Stipulations which it had previously sent to the Clerk. In their motions, the Department of Justice requested that the Court "provide the other parties in this case 30 days from service of this motion to file any objections they might have to the dismissal of this case." This was the first time that the government indicated to the court that views of the black plaintiffs were relevant to the determination whether or not to dismiss the cases.

2. Mr. Reynolds also stated, again in response to a question from Senator Simon, that "we have had several meetings with the NAACP and other civil rights groups. We've sat down and

consulted with them; we worked out a process that I think now they are comfortable with" (Tr. 90). While the Legal Defense Fund cannot speak for any other groups who may have met with Justice Department officials, we can state that we are still very "uncomfortable" with the Justice Department's approach to these matters.

On March 4, 1988, the Department responded to our earlier correspondence, in which we had suggested a meeting. (See copy of letter appended as Exhibit "E"). While such a meeting was held, it was not productive. The Department refused to consider any compromise of its position on dissolving all prior injunctive decrees if the cases were dismissed, which would effectively leave black parents and their children without any protection from a resumption of discriminatory conduct. As LDF attorneys told the district court at a May 18, 1988 status conference in the matter,

> We had a meeting with the Department of Justice shortly after these motions were filed and told the Department that we did not object to dismissal of the cases, if the permanent injunctions were to remain in effect[.]

(Tr. of conference at 6.) At the status conference, the school systems agreed to the suggestion made by plaintiff-intervenors, for a dismissal without dissolving the prior injunctive decree but the Department of Justice said that "the government could not agree with" this approach (Tr. at 16). The matter has not yet been finally resolved by the district court.

We appreciate the opportunity to include within the record a more accurate description of the Justice Department's efforts in Georgia.

Sincerely yours,

Elaine R. Jones vjc

Elaine R. Jones
Deputy Director-Counsel

Norman J. Chachkin

Norman J. Chachkin
Assistant Counsel

ERJ/NJC:c
encs.

U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

WBR:ND:PM:LS:cja
DJ 169-0-1

FEB 3 1988

Gregory J. Leonard
Clerk
Middle District of Georgia
P.O. Box 128
Macon, Georgia 31202

Re: United States of America and Ridley, et al. v.
State of Georgia, C.A. No. 12972

Dear Mr. Leonard:

In recent months this Division has conducted a review of the school desegregation cases to which it is a party. We have focused this review on those cases in which the defendant school districts were previously declared to be operating unitary school systems and in which the detailed desegregation orders have been dissolved by the court and a general injunction imposed. At that time, these cases were placed on the court's inactive docket.

These orders were entered, in most cases, over ten years ago and we do not believe it was ever the intent of either the court or the parties to keep these cases on its docket indefinitely. Once a school district has fully remedied the constitutional violations committed by the district, "the district court ha[s] fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." Pasadena Board of Education v. Spangler, 427 U.S. 424, 437 (1976). Accordingly, a court should relinquish jurisdiction and dismiss the case.

Our office is in the process of contacting a number of school districts involved in these cases to determine whether they are interested in entering into stipulations to have their cases dismissed. Some of these districts have already responded and have agreed to the dismissal and have signed joint stipulations. This procedure has been followed in a number of cases where the parties have agreed that a school district is unitary and dismissal appropriate.

Enclosed please find the original and two copies of a Joint Stipulation of Dismissal signed by the United States and eight school districts in the above captioned case: Grady County, Irwin County, McDuffie County, Macon County, Mitchell County, Monroe County, Morgan County and Peach County. We have also included a proposed Judgment and Order for the respective districts. As you can see from the Certificate of Service, we are sending notice of this Stipulation to the State of Georgia and to private plaintiffs.

We request that you assign this matter to the appropriate judge for consideration. If you have any questions, please call me (202)/FTS 633-4092.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: John R. Moore for
Pauline A. Miller
Attorney
Educational Opportunities
Litigation Section

U.S. Department of Justice
Civil Rights Division

Washington, D.C. 20530

WBR:ND:FM:LS:cja
DJ 169-0-1

FEB 3 1988

Mr. Norman Chachkin
NAACP-Legal Defense and
Education Fund
99 Hudson Street, 16th Floor
New York City, New York 10013

Re: United States of America and Ridley, et al.
v. State of Georgia, C.A. No. 12972

Dear Mr. Chachkin:

In recent months this Division has conducted a review of the school desegregation cases to which it is a party. We have focused this review on those cases in which the defendant school districts were previously declared to be operating unitary school systems and in which the detailed desegregation orders have been dissolved by the court and a general injunction imposed. At that time, these cases were placed on the court's inactive docket. This occurred in a number of the U.S. v. Georgia cases.

These orders were entered, in most cases, over ten years ago and we do not believe it was the intent of either the court or the parties to keep these cases on its docket indefinitely. Once a school district has fully remedied the constitutional violations committed by the district, "the district court ha[s] fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." Pasadena board of Education v. Spangler, 427 U.S. 424, 437 (1976). Accordingly, a court should relinquish jurisdiction and dismiss the case.

We have already contacted a number of these school districts, and most of them have indicated that they would like to have their cases dismissed. We have enclosed for your information the Joint Stipulation of Dismissal and Proposed Order that we are using. The following school districts have signed the stipulation and we are preparing to submit the pleadings to the court: Grady County, Irwin County, McDuffie County, Macon County, Mitchell County, Monroe County, Morgan County and Peach County.

Several other districts have expressed interest in entering into such stipulated dismissals and we are getting ready to proceed with obtaining the necessary signatures. These districts are: Camden County, Harris County, Hart County, Jasper County, Jones County, Lee County, Marion County, Newton County and Putnam County.

We have also included for your information student enrollment information for the above districts by race and by school. This information is for the 1986-1987 school year.

If you have any questions about this matter, please call me at (202) 633-4092.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: John R. Moore for
Pauline Miller
Attorney
Educational Opportunities
Litigation Section

February 16, 1988

Honorable Gregory J. Leonard,
Clerk
U.S. District Court for the
Middle District of Georgia
475 Mulberry Street, Room 216
Macon, Georgia 31202

Re: United States of America and
Ridley, et al. v. State of
Georgia
Civil Action No. 12972

Dear Mr. Leonard:

Our office last week received a copy of the February 3, 1988 letter to you (with enclosures) from Pauline A. Miller, attorney, Educational Opportunities Litigation Section, Civil Rights Division, U.S. Department of Justice, concerning the above matter. As we understand from the letter, there were enclosed "joint stipulations of dismissal" signed only by the United States and the following eight school districts in the above-captioned case: Grady County, Irwin County, McDuffie County, Macon County, Mitchell County, Monroe County, Morgan County and Peach County.

This office, along with local counsel, represents the Ridley interveners in this matter. Although attorney Miller's letter indicated that the Civil Rights Division had been in the process for some time of contacting the school districts concerning these stipulations, we first became aware of the process on receipt of the February 3, 1988 letter. Thus the "joint stipulations" submitted to you have not been executed by counsel for all parties to the action

We note from Ms. Miller's letter that no action has been formally requested of the Court concerning these stipulations and absent consent of all parties or a motion to the court, we believe that no action is appropriate at this time. We would appreciate it if your office would inform if the court is requested to act on these proposed stipulations by formal motion, or of any other action the court indicates it might take with respect to the proposed stipulations.

EXHIBIT "C" - page 1

-2-

In the meantime, since we will need time to consider the underlying facts with respect to the requested dismissals, we would like to obtain copies of the docket sheets in the case concerning each one of the school districts identified by the United States for which a stipulation has been proposed. You may bill us for the cost of copying docket sheets at the address below.

Sincerely yours,

Lowell Johnston
rjc

Lowell Johnston

LJ:ja

cc: Ms. Pauline A. Miller
Attorney at Law

EXHIBIT "C" - page 2

February 16, 1988

Ms. Pauline A. Miller
Attorney at Law
Educational Opportunities Litigation
Section
Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Re: United States and Ridley
v. State of Georgia
Civil Action No. 12972

Dear Ms. Miller:

Last week, this office received a copy of your February 3, 1988 letter to Hon. Gregory J. Leonard, Clerk of the United States District Court for the Middle District of Georgia, enclosing eight proposed "Joint Stipulations" in the above-captioned matter. We also received copies of letters from Nathaniel Douglas, Esq. to counsel for the Lee, Jasper, Harris, Marion, Camden, Jones, Newton, Putnam, and Hart County school districts, proposing similar "Joint Stipulations." The proposed stipulations call for vacating all injunctive orders and dismissing the cases, apparently with prejudice (although this is not specified).

We appreciate your sending us this material; along with local counsel, this office represents the Ridley intervenors in this action. We strongly object, however, to the procedure which the United States is undertaking in this matter. We are particularly surprised and concerned by your submission to the Clerk of the Court of a stipulation proposing dismissal of these actions which has not been executed by counsel for all of the parties. As we note in our letter of this date to Mr. Leonard, the first notice which we had of the United States' intention to seek dismissal of these actions and vacation of the injunctive orders which have been entered therein was when we received your letter and attachments.

We believe that the course of action suggested by the United States is improper and fails to protect the rights of black citizens and schoolchildren on whose behalf the Attorney General originally brought this suit, and whose interests the Ridley intervenors represent in this matter. We do not believe that school desegregation cases differ fundamentally from other equity suits; rather, we believe that plaintiffs (or, in this case, plaintiff-intervenors) are entitled to appropriate permanent injunctive relief. The injunctive decrees currently in effect in these cases may serve as such permanent relief, or modifications may be required; but in no case (in our opinion) is the complete dismissal and vacation of all relief heretofore granted, as the United States suggests, appropriate.

We do not believe that the action you have suggested is supported by *Pasadena Board of Education v. Spangler*, which you cite in your letter. Nothing in the decrees currently in effect presages or facilitates entry of the kind of relief ordered in *Spangler*, which the Supreme Court disapproved. We might also note that, contrary to your suggestion, we do not believe that any of the defendants in this case have been declared to be "unitary," as that term is now understood, in accordance with the procedures required to be followed in the Eleventh Circuit. *See Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1413-14 (11th Cir. 1985).

As we indicate in our letter to Mr. Leonard, we are undertaking the necessary process of factual review in order to determine what position the Ridley intervenors should take in this matter. Since we were not previously part of the process of negotiating the stipulations which you have proposed, we hope that out of fairness the United States will make no attempt to pursue dismissal and vacation of outstanding orders in any of these cases until we have had an adequate opportunity to complete our fact-gathering and to meet with you to discuss this approach. While you have sent us limited information about current school enrollments, we would also appreciate the opportunity to review whatever additional information about these school systems is in your possession. We will be contacting you about studying this material.

If a conference with you, Mr. Douglas, or Mr. Reynolds would be appropriate or helpful, we stand ready to meet and would appreciate hearing from you.

Sincerely yours,

Lowell Johnston

Lowell Johnston

LJ/c

cc: Nathaniel Douglas, Esq.

EXHIBIT "D" - page 2

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Psm 7722

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 4 1988

Lowell Johnston, Esquire
NAACP Legal Defense Fund
99 Hudson Street, 16th Floor
New York, New York 10013

Re: United States and Ridley v. State of Georgia,
Civil Action No. 12972

Dear Mr. Johnston:

This will acknowledge receipt of your letter of February 16, 1988, to Ms. Polly Miller of our office concerning the above-styled case. The case closing project which the United States has initiated in Ridley is the product of a lengthy review of longstanding school cases, a large number of which were declared unitary many years ago. The decision to seek dismissal of those cases where the record discloses that school districts have successfully implemented extant desegregation orders is a key element of the overall enforcement objective of this Division. Namely, (i) to return supervision of districts that have remedied past intentional discrimination to local school authorities, as contemplated by existing case law, and (ii) to refocus available resources on those school districts that continue to exhibit vestiges of a dual system or otherwise fail to accord equal educational opportunities to all students.

It has certainly not been our intent to be disingenuous with plaintiffs or the court concerning our efforts in this regard. Indeed, we would look forward to meeting with you at a mutually convenient time to fully discuss this endeavor. I am free to meet any day next week and would like to discuss this matter with you. Please let me know what would be convenient for you.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:
Nathaniel Douglas
Chief
Educational Opportunities
Litigation Section